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THE
COMPILED LAWS OF NEVADA
IN FORCE

FROM 1861 TO 1900 (INCLUSIVE)

**WITH ANNOTATIONS FROM VOLUMES I TO XXV OF THE
DECISIONS OF THE SUPREME COURT OF NEVADA**

COMPILED AND ANNOTATED BY
HENRY C. CUTTING
OF THE NEVADA BAR



CARSON CITY, NEVADA
ANDREW MAUTE, SUPERINTENDENT OF STATE PRINTING
1900



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PREFACE.

This compilation has been made from the session laws from 1861 to 1899, inclusive. Former compilations have been used only to prove the accuracy of this work.

The object of a compilation of the laws of a state is to bring the enactments of the various sessions of the Legislature together under appropriate heads, so that the present law may be readily found and readily understood. The compiler has no authority to change a law as passed by the Legislature. Each Act must be preserved intact. The various sections must follow consecutively except as they may have been repealed, superseded, declared void by the Supreme Court, or have become obsolete. This makes the arrangement of the Acts under general heads or in chapters difficult, as the various sections of an Act may relate to different subjects, and the Act could, on that account, be placed under two or more different heads. This difficulty can only be obviated by a carefully arranged index.

The subjects, or chapters, are arranged in the same order as in the compilation of 1885, for the reason that the bar and judiciary have become familiar with the arrangement of that book, and there is no particular reason for a different order. No chapter numbers, nor contents of chapters, have been given, as the sections are numbered consecutively from the first to the last page of the book, and the index refers to sections, so that to number the chapters would only serve to confuse.

A number of Acts which are still in force have been purposely omitted, as they are of so little interest that their republication would only incumber the work; but every live law not printed herein is noted with reference to where it and its amendments may be found in the session laws, and reference is made thereto in the index. The omission of these Acts has been ordered by the Justices of the Supreme Court who have approved this work.

The laws prescribing fees for county and township officers are in a deplorable state, the application of all of them being determined either by the number of votes cast in a county or by a special reference to certain counties. An effort has been made to overcome this mixed condition of affairs by making copious notes all through the chapter showing the application of each section, but there still remains much uncertainty, which can be remedied only by the Legislature passing a general fee bill of uniform application. The Fee Acts relating to certain counties by name are not printed, but only referred to, as they are not general laws. Their constitutionality is also very doubtful.

The references to the Nevada Reports have been carefully selected with the desire that they should not only be apt and applicable to the sections under which they are noted, but that they should be complete. With what success this

object has been attained is for the profession to determine. As neither the 24th nor 25th Nevada are yet in print, pages could not be given, and cases cited in them must be found by reference to the "Table of Cases Reported," when those volumes are printed.

The use of head notes instead of marginal notes for each section was suggested by many attorneys, by our Supreme Court, and by the later compilations and codes of other states.

The appendix contains references to local and special Acts and others which were not thought worthy of reprinting, all of which, however, are referred to in the index, and the pages on which they are to be found in the session laws are given.

No separate index is given for the State Constitution nor the United States Statutes printed in the front of the book, but everything is included in the general index, as it was thought desirable that a party, when looking up a legal point, should have not only the statute law but the fundamental law thereon as well.

H. C. CUTTING,
Compiler.

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CERTIFICATE OF AUTHENTICATION.

STATE OF NEVADA, }
DEPARTMENT OF STATE. } ss.

I, EUGENE HOWELL, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the annexed is a true and full compilation of the General Laws of the State of Nevada, prepared by H. C. Cutting, under and by authority of an Act of the Legislature of the State of Nevada entitled "An Act to provide for the compiling and publishing of the laws of the State of Nevada," approved February 15, 1899.



IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Great Seal of State, at my office
in Carson City, Nevada, this 28th day of October,
A. D. 1899.

EUGENE HOWELL,
Secretary of State.

EXTRACTS FROM
UNITED STATES STATUTES

NATURALIZATION.

STATUTES OF THE UNITED STATES RELATIVE TO NATURALIZATION.

Aliens, How Naturalized.

1. SECTION 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Declaration of Intention.

First—He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

14 April, 1802, c. 28, ss. 1, 3, v. 2, 153, 155; 26 May, 1824, c. 186, s. 4, v. 4, 69; 1 Feb., 1876, c. 5, v. 19, 2.

Oath to Support the Constitution of the United States.

Second—He shall at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

14 April, 1802, c. 28, s. 1, v. 2, 153.

Residence—Good Moral Character.

Third—It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Titles of Nobility to Be Renounced.

Fourth—In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

22 Mar., 1816, c. 31, s. 2, v. 3, 259; 24 May 1828, c. 116, s. 2, v. 4, 310; 1 Feb., 1876, c. 5, v. 19, 2.

Remainder of section obsolete.

Aliens Honorably Discharged from Military Service.

2. SEC. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged,

shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

17 July, 1862, c. 200, s. 21, v. 12, 597.

Minor Residents.

3. SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

26 May, 1824, c. 186, s. 1, v. 4, 69.

Widow and Children of Declarants.

4. SEC. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

26 Mar., 1804, c. 47, s. 2, v. 2, 293.

Aliens of African Nativity and Descent.

5. SEC. 2169. The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

14 July, 1870, c. 254, s. 7, v. 16, 256; 18 Feb., 1875, c. 80, v. 18, 318.

Residence of Five Years in United States.

6. SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

3 Mar., 1813, c. 42, s. 12, v. 2, 811.

Alien Enemies Not Admitted.

7. SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

14 April, 1802, c. 28, s. 1, v. 2, 153; 30 July, 1813, c. 36, v. 3, 53.

Children of Persons Naturalized Under Certain Laws to Be Citizens.

8. SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

14 April, 1802, c. 28, s. 4, v. 2, 155.

9. SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

17 June, 1870, c. 133, s. 5, v. 16, 154.

Naturalisation of Seamen.

10. SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any Act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen. *Revised Statutes of the U. S., 1878, 368.*

7 June, 1872, c. 322, s. 29, v. 17, 268.

RECORDS.

STATUTES OF THE UNITED STATES RELATIVE TO THE AUTHENTICATION OF RECORDS.

Authentication of Legislative Acts and Proof of Judicial Proceedings of States, etc.

11. SECTION 905. The Acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in

every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Proofs of Records, etc., Kept in Offices Not Pertaining to Courts.

12. SEC. 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the Governor, or Secretary of State, the Chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such Governor, Secretary, Chancellor or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

27 Mar., 1804, c. 56, ss. 1, 2, v. 2, 298, 299; 21 Feb., 1871, c. 62, v. 16, 419.

Copies of Foreign Records, etc., Relating to Land Titles in the United States.

13. SEC. 907. It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

22 Feb., 1849, c. 61, s. 1, v. 9, 346; 2 Mar., 1849, c. 82, v. 9, 350.

Little & Brown's Edition of the Statutes to Be Evidence.

14. SEC. 908. The edition of the laws and treaties of the United States, published by Little & Brown, shall be competent evidence of the several public and private Acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several states, without any further proof or authentication thereof.

8 Aug., 1846, c. 100, s. 2, v. 9, 76.

Possessory Actions for Recovery of Mining Titles.

15. SEC. 910. No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which

such mines lie is in the United States; but each case shall be adjudged by the law of possession. *Revised Statutes of the U. S., 1878, 171.*

27 Feb., 1865, c. 64, s. 9, v. 13, 441.

UNITED STATES SENATOR.

STATUTES OF THE UNITED STATES RELATIVE TO THE ELECTION OF UNITED STATES SENATORS.

When Senators to Be Elected.

16. SECTION 14. The legislature of each state which is chosen next preceding the expiration of the time for which any Senator was elected to represent such state in Congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress.

25 July, 1866, c. 245, s. 1, v. 14, 243.

Mode of Election.

17. SEC. 15. Such election shall be conducted in the following manner: Each house shall openly, by a *viva voce* vote of each member present, name one person for Senator in Congress from such state, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; or if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected Senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose by *viva voce* vote of each member present, a person for Senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a Senator is elected.

25 July, 1866, c. 245, s. 1, v. 14, 243.

Vacancy Occurring Before Meeting of Legislature.

18. SEC. 16. Whenever on the meeting of the legislature of any state a vacancy exists in the representation of such state in the senate, the legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a Senator for a full term.

25 July, 1866, c. 245, s. 2, v. 14, 245.

Vacancy During Session of Legislature.

19. SEC. 17. Whenever during the session of the legislature of any state a vacancy occurs in the representation of such state in the senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the legislature has organized and has notice of such vacancy.

25 July, 1866, c. 245, s. 2, v. 14, 243.

Election of Senators Certified.

20. SEC. 18. It shall be the duty of the Executive of the state from which any Senator has been chosen, to certify his election, under the seal of the state, to the President of the Senate of the United States.

25 July, 1866, c. 245, s. 3, v. 14, 244.

Countersign of Certificate.

21. SEC. 19. The certificate mentioned in the preceding section shall be countersigned by the Secretary of State of the state. *Revised Statutes of the U. S., 1878, §.*

25 July, 1866, c. 245, s. 3, v. 14, 244.

CONSTITUTION OF NEVADA

CONSTITUTION OF NEVADA.

PRELIMINARY ACTION.

Preamble.

22. 1. WHEREAS, The Act of Congress, approved March twenty-first, A. D. eighteen hundred and sixty-four, "To enable the people of the Territory of Nevada to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states," requires that the members of the convention for framing such constitution shall, after organization, on behalf of the people of said territory, adopt the constitution of the United States; therefore, be it

Constitution of United States Adopted.

23. 2. *Resolved*, That the members of this convention, elected by the authority of the aforesaid enabling Act of Congress, assembled in Carson City, the capital of said Territory of Nevada, and immediately subsequent to its organization, do adopt, on behalf of the people of said territory, the constitution of the United States.

ORDINANCE.

24. 3. In obedience to the requirements of an Act of the Congress of the United States, approved March twenty-first, A. D. eighteen hundred and sixty-four, to enable the people of Nevada to form a constitution and state government, this convention, elected and convened in obedience to said enabling Act, do ordain as follows—and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

Slavery Prohibited.

First—There shall be in this state neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

Toleration of Religious Sentiment.

Second—That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested, in person or property, on account of his or her mode of religious worship.

Right and Title to Public Lands Disclaimed—Taxation—United States Not to Be Taxed.

Third—That the people inhabiting said territory do agree, and declare, that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by the United States.

PREAMBLE.

25. 4. We, the people of the State of Nevada, grateful to Almighty God for our freedom, in order to secure its blessings, insure domestic tranquility, and form a more perfect government, do establish this

CONSTITUTION.

ARTICLE I.

DECLARATION OF RIGHTS.

Inalienable Rights.

26. SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

Paramount Allegiance—Powers of Federal Government.

27. SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the paramount allegiance of every citizen is due to the Federal Government, in the exercise of all its constitutional powers, as the same have been, or may be, defined by the supreme court of the United States, and no power exists in the people of this or any other state of the Federal Union to dissolve their connection therewith, or perform any act tending to impair, subvert, or resist the supreme authority of the government of the United States. The constitution of the United States confers full power on the Federal Government to maintain and perpetuate its existence, and whensoever any portion of the states, or people thereof, attempt to secede from the Federal Union, or forcibly resist the execution of its laws, the Federal Government may, by warrant of the constitution, employ armed force in compelling obedience to its authority.

Right of Trial by Jury.

28. SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law; and in civil cases, if three-fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; *provided*, the legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof may require a unanimous verdict, notwithstanding this provision.

State v. McClear, 11 Nev. 38.

Religious Worship.

29. SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Habeas Corpus.

30. SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Bail.

31. SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

When Bailable.

32. SEC. 7. All persons shall be bailable by sufficient sureties; unless, for capital offenses, when the proof is evident or the presumption great.

Capital or Infamous Crimes, How Tried—Taking of Property.

33. SEC. 8. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this state may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature), except on presentment or indictment of a grand jury, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

1. RIGHT OF PARTY CHARGED BEFORE A COURT MARTIAL TO COUNSEL. *Huffaker v. Crosby*, 24 Nev.
2. "INDICTMENT OF A GRAND JURY," MEANING OF. *State v. Chamberlain*, 6 Nev. 257.
3. WHEN JEOPARDY ATTACHES. *Ex parte Maxwell*, 11 Nev. 434; *State v. Rover*, 10 Nev. 398; *State v. Pritchard*, 16 Nev. 106.
4. COMPELLING PERSON TO SHOW MARKS OF IDENTIFICATION NOT COMPELLING HIM TO BE A WITNESS AGAINST HIMSELF. *State v. Ah Chuey*, 14 Nev. 79.
5. DUE PROCESS OF LAW DEFINED. *Wright v. Cradlebaugh*, 3 Nev. 349; *Gibson v. Mason*, 5 Nev. 284.
6. EMINENT DOMAIN FOR MINING AND MILLING—PUBLIC USE. *Dayton G. & S. M. Co. v. Seawell*, 11 Nev. 394; *Overman S. M. Co. v. Corcoran*, 15 Nev. 147.

Freedom of Speech and of the Press.

34. SEC. 9. Every citizen may freely speak, write, and publish his sentiment on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions, and civil actions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted or exonerated.

Rights to Assemble and Petition.

35. SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Standing Army Not to Be Maintained.

36. SEC. 11. The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

Quartering of Soldiers.

37. SEC. 12. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner to be prescribed by law.

Representation.

38. SEC. 13. Representation shall be apportioned according to population.

Fletcher v. Rhue, 24 Nev.

Privileges of Debtors.

39. SEC. 14. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter

contracted; and there shall be no imprisonment for debt, except in cases of fraud, libel, or slander, and no person shall be imprisoned for a militia fine in time of peace.

IMPRISONMENT ON CIVIL PROCESS. *Ex parte Bergman*, 18 Nev. 341.

Ex Post Facto Law.

40. SEC. 15. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

Rights of Bona Fide Residents.

41. SEC. 16. Foreigners who are, or who may hereafter become, *bona fide* residents of this state, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

Slavery Prohibited.

42. SEC. 17. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state.

Rights Against Seizures and Searches.

43. SEC. 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

Treason, of What to Consist.

44. SEC. 19. Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort; and no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Rights Retained by the People.

45. SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

Right of Suffrage, Who Entitled.

46. SECTION 1. Every male citizen of the United States (not laboring under the disabilities named in this constitution), of the age of twenty-one years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; *provided*, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights; and no person who, after arriving at the age of eighteen years, shall have voluntarily borne arms against the United States, or held civil or military office under the so-called Confederate States, or either of them, unless an amnesty be granted to such by the Federal Government; and no idiot or insane person shall be entitled to the privilege of an elector.

[Amended by striking out the word *white* before the word *male*. Adopted by the legislature 1877 and 1879; ratified at the general election of 1890.]

1. REGISTRY LAW OATH UNCONSTITUTIONAL. *Davies v. McKeeby*, 5 Nev. 369.

2. *McMillan v. Sadler*, 25 Nev.

Residence, When Not Gained or Lost.

47. SEC. 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in

the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

Right of Suffrage by Persons in Military Service.

48. SEC. 3. The right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be in the military or naval service of the United States; *provided*, the votes so cast shall be made to apply to the county and township of which said voters were *bona fide* residents at the time of their enlistment; *and provided, further*, that the payment of a poll tax or a registration of such voters shall not be required as a condition to the right of voting. Provision shall be made by law regulating the manner of voting, holding elections, and making returns of such elections, wherein other provisions are not contained in this constitution.

McMillan v. Sadler, 25 Nev.

Elector Not to Be Arrested.

49. SEC. 4. During the day on which any general election shall be held in this state, no qualified elector shall be arrested by virtue of any civil process.

Elections.

50. SEC. 5. All elections by the people shall be by ballot, and all elections by the legislature, or by either branch thereof, shall be by *viva voce*.

Registration of Electors Required.

51. SEC. 6. Provision shall be made by law for the registration of the names of the electors within the counties of which they may be residents, and for the ascertainment, by proper proofs, of the persons who shall be entitled to the right of suffrage, as hereby established, to preserve the purity of elections and to regulate the manner of holding and making returns of the same; and the legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary, as a test of electoral qualifications.

REGISTRY OATH UNCONSTITUTIONAL. (Stats. 1888, 141); Clayton v. Harris, 7 Nev. 64. (Stats. 1887, 108); State v. Findlay, 20 Nev. 198.

Poll Tax.

52. SEC. 7. The legislature shall provide by law for the payment of an annual poll tax of not less than two nor exceeding four dollars from each male person resident in the state, between the ages of twenty-one and sixty years (uncivilized American Indians excepted), one-half to be applied for state, and one-half for county purposes; and the legislature may, in its discretion, make such payment a condition to the right of voting.

Wilson v. Stone, 24 Nev.; Hassett v. Walls, 9 Nev. 387.

Qualified Voters.

53. SEC. 8. All persons qualified by law to vote for representatives to the general assembly of the Territory of Nevada on the twenty-first day of March, A. D. eighteen hundred and sixty-four, and all other persons who may be lawful voters in said territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this constitution.

ARTICLE III.

DISTRIBUTION OF POWERS.

Powers Restricted.

54. SECTION 1. The powers of the government of the State of Nevada shall be divided into three separate departments—the legislative, the executive and the judicial; and no persons charged with the exercise of powers properly belonging

to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Rosenstock v. Swift, 11 Nev. 128; Arlick v. Hampton, 13 Nev. 439; Ex parte Darling, 16 Nev. 98; Mason v. Com. Ormsby Co., 7 Nev. 392; Sawyer v. Dooley, 21 Nev. 390.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Vested in Senate and Assembly.

55. SECTION 1. The legislative authority of this state shall be vested in a senate and assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such legislature shall be held at the seat of government of the state.

Sessions Biennial.

56. SEC. 2. The sessions of the legislature shall be biennial, and shall commence on the third Monday of January next ensuing the election of members of the assembly, unless the Governor of the state shall in the *interim*, convene the legislature by proclamation.

[As amended. Amendment adopted 1885, 151; agreed to 1887, 165, and ratified at special election February 11, 1889.]

Assemblymen, When Chosen—Term of Office.

57. SEC. 3. The members of the assembly shall be chosen biennially, by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November, and their term of office shall be two years from the day next after their election.

Senators, When Chosen—Term of Office.

58. SEC. 4. Senators shall be chosen at the same time and places as members of the assembly, by the qualified electors of their respective districts, and their term of office shall be four years from the day next after their election.

Qualifications Of—Number of Senators.

59. SEC. 5. Senators and members of the assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the assembly.

Who Judge of Qualification—May Punish and Expel.

60. SEC. 6. Each house shall judge of the qualifications, elections, and returns of its own members, choose its own officers (except the President of the Senate), determine the rules of its proceedings, and may punish its members for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member.

May Punish for Contempt, etc.

61. SEC. 7. Either house, during the session, may punish, by imprisonment, any person, not a member, who shall have been guilty of disrespect to the house by disorderly or contemptuous behavior in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

Not Eligible to Appointment to Civil Office.

62. SEC. 8. No Senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

the service of the United States, nor while engaged in the navigation of the waters of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

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62. SEC. 8. No Senator or member of assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

Who Not Eligible to Office.

63. SEC. 9. No person holding any lucrative office under the government of the United States, or any other power, shall be eligible to any civil office of profit under this state; *provided*, that Postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

Nourse v. Clark, 3 Nev. 566; Summerfield v. Clarke, 21 Nev. 333; McMillan v. Sadler, 25 Nev.

When Disqualified.

64. SEC. 10. Any person who shall be convicted of the embezzlement or defalcation of the public funds of this state, or who may be convicted of having given or offered a bribe to procure his election or appointment to office, or received a bribe to aid in the procurement of office for any other person, shall be disqualified from holding any office of profit or trust in this state; and the legislature shall, as soon as practicable, provide by law for the punishment of such defalcation, bribery, or embezzlement as a felony.

Members Exempt from Arrest.

65. SEC. 11. Members of the legislature shall be privileged from arrest on civil process during the session of the legislature, and for fifteen days next before the commencement of each session.

Vacancies, How Filled.

66. SEC. 12. When vacancies occur in either house, the Governor shall issue writs of election to fill such vacancy.

Quorum.

67. SEC. 13. A majority of all members elected to each house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may prescribe.

Journal Required.

68. SEC. 14. Each house shall keep a journal of its own proceedings, which shall be published; and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal.

George v. Swift, 10 Nev. 184.

Doors May Be Closed.

69. SEC. 15. The doors of each house shall be kept open during its session, except the Senate while sitting in executive session; and neither shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be holding their sessions.

Where Bills May Originate.

70. SEC. 16. Any bill may originate in either house of the legislature, and all bills passed by one may be amended in the other.

Laws to Embrace One Subject.

71. SEC. 17. Each law enacted by the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only, but, in such case, the Act as revised, or section as amended, shall be reenacted and published at length.

Humboldt Co. v. Co. Com. Churchill Co., 6 Nev. 30; State v. Silver, 9 Nev. 227; State v. Davis, 14 Nev. 439; Klein v. Kinkead, 16 Nev. 194; School Trustees v. Com. Storey Co., 17 Nev. 96; State v. Ah Sam, 15 Nev. 26; Esser v. Spaulding, 17 Nev. 290; State v. Trolson, 21 Nev. 419; Norcross v. Com. Washoe Co., 22 Nev. 399; Osburn v. Beck, 24 Nev.; Fletcher v. Rhue, 24 Nev.

Bills, How Read—How Passed—How Signed.

72. SEC. 18. Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journals of each house; and a majority of all the members elected to each house shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the Secretary of the Senate and Clerk of the Assembly.

Cardwell v. Glenn, 18 Nev. 34; George v. Swift, 10 Nev. 176; Chase v. Rogers, 10 Nev. 250; Osburn v. Beck, 24 Nev.

Money, How to Be Drawn.

73. SEC. 19. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the legislature.

Legislature Shall Not Pass Local or Special Laws in Certain Cases—Cases Excepted.

74. SEC. 20. The legislature shall not pass local or special laws in any of the following enumerated cases—that is to say: Regulating the jurisdiction and duties of the Justices of the Peace; for the punishment of crimes and misdemeanors; regulating the practice of courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons; vacating roads, town plots, streets, alleys and public squares; summoning and impaneling grand and petit juries, and providing for their compensation; regulating county and township business; regulating the election of county and township officers; for the assessment and collection of taxes for state, county and township purposes; providing for opening and conducting elections of state, county and township officers, and designating the places of voting; providing for the sale of real estate or personal property belonging to minors or other persons under legal disabilities; giving effect to invalid deeds, wills or other instruments; refunding money paid into the state treasury, or into the treasury of any county; releasing the indebtedness, liability or obligation of any corporation, association or person to the state, or to any county, town or city of this state. But nothing in this section shall be construed to deny or restrict the power of the legislature to establish and regulate the compensation and fees of county and township officers; to establish and regulate the rates of freight, passage, toll, and charges of railroads, toll roads, ditch, flume and tunnel companies incorporated under the laws of this state or doing business therein.

[As amended. Amendment adopted 1885, 152; agreed to 1887, 166, and ratified at special election, February 11, 1889.]

1. REGULATING COUNTY BUSINESS.

Relief Act Unconstitutional. Williams v. Bidleman, 7 Nev. 68.

County Incorporation Act Unconstitutional. Schweiss v. District Court, 23 Nev. 226.

Redemption Fund Act Not Unconstitutional. Youngs v. Hall, 9 Nev. 212.

2. GIVING EFFECT TO UNATTESTED WILL. Estate of Sticknoth, 7 Nev. 223.**3. CHANGE OF VENUE.** Hooten v. McKinney, 5 Nev. 194.**4. ASSESSMENT AND COLLECTION OF TAXES.** Gibson v. Mason, 5 Nev. 284; State v. Cal. M. Co., 15 Nev. 248; State v. Con. Va. M. Co., 16 Nev. 432.**5. FIXING SALARIES OF COUNTY AND TOWNSHIP OFFICERS SINCE 1889.** McNamee v. Spinner, 22 Nev. 213.**Laws to Be General.**

75. SEC. 21. In all cases enumerated in the preceding section, and in all

other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

Hess v. Pegg, 7 Nev. 23; Evans v. Job, 8 Nev. 322; Rosenstock v. Swift, 11 Nev. 128; Clark v. Irwin, 5 Nev. 111; Ash v. Parkinson, 5 Nev. 17; Ex parte Spinney, 10 Nev. 323; State v. Ah Chew, 16 Nev. 50.

Suits Against the State.

76. SEC. 22. Provision may be made by general law for bringing suit against the State, as to all liabilities originating after the adoption of this constitution.

Enacting Clause.

77. SEC. 23. The enacting clause of every law shall be as follows: "The people of the State of Nevada, represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.

Chase v. Rogers, 10 Nev. 250.

Lotteries Prohibited.

78. SEC. 24. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

Ex parte Blanchard, 9 Nev. 101; State v. Overton, 16 Nev. 136.

County and Township Government.

79. SEC. 25. The legislature shall establish a system of county and township government, which shall be uniform throughout the state.

Singleton v. Eureka Co., 22 Nev. 91; Schweiss v. Dist. Court, 23 Nev. 226.

County Commissioners.

80. SEC. 26. The legislature shall provide by law for the election of a Board of County Commissioners in each county, and such County Commissioners shall, jointly and individually, perform such duties as may be prescribed by law.

Mason v. County Com. Ormsby Co., 7 Nev. 392; Copeland v. Woodbury, et al., 17 Nev. 337.

Jury Service—Elections.

81. SEC. 27. Laws shall be made to exclude from serving on juries all persons not qualified electors of this state, and all persons who shall have been convicted of bribery, perjury, forgery, larceny, or other high crimes, unless restored to civil rights; and laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

When Money May Be Drawn from Treasury.

82. SEC. 28. No money shall be drawn from the state treasury as salary or compensation to any officer or employee of the legislature, or either branch thereof, except in cases where such salary or compensation has been fixed by a law in force prior to the election or appointment of such officer or employee, and the salary or compensation so fixed shall neither be increased nor diminished so as to apply to any officer or employee of the legislature, or either branch thereof, at such session; *provided*, that this restriction shall not apply to the first session of the legislature.

Time of Sessions.

83. SEC. 29. The first regular session of the legislature, under this constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days.

Homestead Exempt from Forced Sale.

84. SEC. 30. A homestead, as provided by law, shall be exempt from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes or for the payment of obligations contracted for the

purchase of said premises, or for the erection of improvements thereon; *provided*, the provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife; and laws shall be enacted providing for the recording of such homestead within the county in which the same shall be situated.

Dunker v. Chedic, 4 Nev. 378; *Hopper v. Parkinson*, 5 Nev. 233.

Property of Wife—Registration Of.

85. SEC. 31. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation, as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Power of Legislature Over County Officers.

86. SEC. 32. The legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: County Clerks, County Recorders, Auditors, Sheriffs, District Attorneys, County Surveyors, Public Administrators and Superintendents of Schools. The legislature shall provide for their election by the people, and fix by law their duties and compensation. County Clerks shall be *ex officio* Clerks of the Courts of Record and of the Boards of County Commissioners in and for their respective counties.

[As amended. Resolution adopted 1887, 161; agreed to 1889, 151, and ratified at special election, February 11, 1889.]

Vesey v. Herman, 1 Nev. 36; *Nevada v. Tilford*, 1 Nev. 240; *Brown v. Davis*, 1 Nev. 409; *Clarke v. Irwin*, 5 Nev. 111; *Perry v. Arrington, et al.*, 18 Nev. 412; *Howell v. LaGrave*, 23 Nev. 374.

Compensation.

87. SEC. 33. The members of the legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of such compensation shall take effect during the term for which the members of either house shall have been elected; *provided*, that an appropriation may be made for the payment of such actual expenses as members of the legislature may incur for postage, express charges, newspapers, and stationery, not exceeding the sum of sixty dollars for any general or special session, to each member; *and, furthermore provided*, that the Speaker of the Assembly, and Lieutenant-Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers, receive an additional allowance of two dollars per diem.

Crosman v. Nightingill, 1 Nev. 325; *King v. Hallock*, 16 Nev. 152.

United States Senators, How Elected.

88. SEC. 34. In all elections for United States Senators, such elections shall be held in joint convention of both houses of the legislature. It shall be the duty of the legislature which convenes next preceding the expiration of the term of such Senator, to elect his successor. If a vacancy in such senatorial representation from any cause occur, it shall be the duty of the legislature then in session, or at the succeeding session thereof, to supply the vacancy. If the legislature shall, at any time, as herein provided, fail to unite in a joint convention within twenty days after the commencement of the session of the legislature for the election [of] such Senator, it shall be the duty of the Governor, by proclamation, to convene the two houses of the legislature in joint convention within not less than five days, nor exceeding ten days, from the publication of his proclamation; and the joint convention, when so assembled, shall proceed to elect the Senator, as herein provided.

Bill to Be Presented to Governor.

89. SEC. 35. Every bill which may have passed the legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign

it; but if not, he shall return it, with his objections, to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses by yeas and nays, by a vote of two-thirds of the members elected to each house, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within five days after it shall have been presented to him (Sunday excepted), exclusive of the day on which he received it, the same shall be a law in like manner as if he had signed it, unless the legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the Governor, within ten days next after the adjournment (Sundays excepted), shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the legislature at its next session, in like manner as if it had been returned by the Governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the legislature, upon a vote taken by yeas and nays, to be entered upon the journals of each house, it shall become a law.

Birdsall v. Carrick, 3 Nev. 154; *Osborn v. Beck*, 24 Nev.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Executive Power.

90. SECTION 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be Governor of the State of Nevada.

Governor—Election and Term of Office.

91. SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the legislature, and shall hold his office for four years from the time of his installation, and until his successor shall be qualified.

Who Eligible.

92. SEC. 3. No person shall be eligible to the office of Governor who is not a qualified elector, and who, at the time of such election, has not attained the age of twenty-five years, and who, except at the first election under the constitution, shall not have been a citizen resident of this state for two years next preceding the election.

Returns of Election, How Made—Who Elected.

93. SEC. 4. The returns of every election for Governor, and other state officers voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the Secretary of State; and on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court, and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and open and canvass the election returns for Governor, and all other state officers, and forthwith declare the result and publish the names of the persons elected. The persons having the highest number of votes for the respective offices shall be declared elected; but in case any two or more have an equal and the highest number of votes for the same office, the legislature shall, by joint vote of both houses, elect one of said persons to fill said office.

Commander-in-Chief.

94. SEC. 5. The Governor shall be Commander-in-Chief of the military forces of this state, except when they shall be called into the service of the United States.

Duties of Governor.

95. SEC. 6. He shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the

officers of the executive department upon any subject relating to the duties of their respective offices.

Execution of Laws.

96. SEC. 7. He shall see that the laws are faithfully executed.

Vacancies in Office, How Filled.

97. SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election and qualification of the person elected to such office.

Clarke v. Irwin, 5 Nev. 111; Rosenstock v. Swift, 11 Nev. 123.

May Convene Legislature.

98. SEC. 9. The Governor may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when organized, the purpose for which they have been convened; and the legislature shall transact no legislative business except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the legislature while in session.

Jones v. Theall, 3 Nev. 233.

Messages to the Legislature.

99. SEC. 10. He shall communicate, by message, to the legislature at every regular session, the condition of the state, and recommend such measures as he may deem expedient.

Power to Adjourn Legislature.

100. SEC. 11. In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next legislature.

Who Not Eligible to Office of Governor.

101. SEC. 12. No person shall, while holding any office under the United States government, hold the office of Governor, except as herein expressly provided.

Powers of Governor as to Fines, Forfeitures and Reprieves.

102. SEC. 13. The Governor shall have the power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, dating from the time of conviction, for all offenses, except in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. And if the legislature should fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor, by his order, may direct. The Governor shall communicate to the legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon, or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, and the date of the remission, commutation, pardon, or reprieve.

Who May Remit Fines and Grant Pardons.

103. SEC. 14. The Governor, Justices of the Supreme Court, and Attorney-General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons, after convictions in all cases, except treason and impeachments, subject to such

regulations as may be provided by law relative to the manner of applying for pardons.

State Seal.

104. SEC. 15. There shall be a seal of this state, which shall be kept by the Governor, and used by him officially, and shall be called the great seal of the State of Nevada.

Grants and Commissions to Be in Name of the State.

105. SEC. 16. All grants and commissions shall be in the name and by the authority of the State of Nevada, sealed with the great seal of the state, signed by the Governor, and countersigned by the Secretary of State.

Lieutenant-Governor, How Elected.

106. SEC. 17. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner as the Governor, and his term of office and eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of the office, or be absent from the state, the President *pro tempore* of the Senate shall act as Governor, until the vacancy be filled or the disability cease.

Acting Governor, When.

107. SEC. 18. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the legislature, be out of the state in time of war, and be at the head of any military force thereof, he shall continue Commander-in-Chief of the military forces of the state.

Hardin v. Sadler, 23 Nev. 356; Sadler v. LaGrave, 23 Nev. 216.

Secretary of State, Controller, Treasurer and Attorney-General, Who Eligible.

108. SEC. 19. A Secretary of State, a Treasurer, a Controller, a Surveyor-General, and an Attorney-General, shall be elected at the same time and places, and in the same manner as the Governor. The term of office of each shall be the same as is prescribed for the Governor. Any elector shall be eligible to either of said offices.

Duties of Secretary of State.

109. SEC. 20. The Secretary of State shall keep a true record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature.

Prison Commissioners—Board of Examiners.

110. SEC. 21. The Governor, Secretary of State, and Attorney-General shall constitute a Board of State Prison Commissioners, which board shall have such supervision of all matters connected with the state prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all claims against the state (except salaries or compensation of officers fixed by law), and perform such other duties as may be prescribed by law. And no claim against the state (except salaries or compensation of officers fixed by law) shall be passed upon by the legislature without having been considered and acted upon by said Board of Examiners.

1. BOARD OF PRISON COMMISSIONERS. Ex parte Darling, 16 Nev. 98.

2. BOARD OF EXAMINERS. Ash v. Parkinson, 5 Nev. 15; Lewis v. Doron, 5 Nev. 389; Cutting v. LaGrave, 23 Nev. 387.

Duties.

111. SEC. 22. The Secretary of State, State Treasurer, State Controller, Surveyor-General, Attorney-General, and Superintendent of Public Instruction shall perform such other duties as may be prescribed by law.

ARTICLE VI.**JUDICIAL DEPARTMENT.****Judicial Power Vested.**

112. SECTION 1. The judicial power of this state shall be vested in a supreme court, district courts, and in Justices of the Peace. The legislature may also establish courts for municipal purposes only, in incorporated cities and towns.

Meagher v. Storey Co., 5 Nev. 244.

Supreme Court—Quorum.

113. SEC. 2. The supreme court shall consist of a Chief Justice and two Associate Justices, a majority of whom shall constitute a quorum; *provided*, that the legislature, by a majority of all the members elected to each branch thereof, may provide for the election of two additional Associate Justices, and, if so increased, three shall constitute a quorum. The concurrence of a majority of the whole court shall be necessary to render a decision.

Election of Judges—Term of Office—Chief Justice.

114. SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the state at the general election, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; *provided*, that there shall be elected, at the first election under this constitution, three Justices of the Supreme Court, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and continue in office thereafter two, four, and six years, respectively, from and including the first Monday of January next succeeding their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine, by lot, the term of office each shall fill, and the Justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior Justice in commission shall be Chief Justice. And in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

Jurisdiction of Court.

115. SEC. 4. The supreme court shall have appellate jurisdiction in all cases in equity; also, in all cases at law in which is involved the title or right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand (exclusive of interest), or the value of the property in controversy exceeds three hundred dollars; also, in all other civil cases not included in the general subdivision of law and equity, and also on questions of law alone, in all criminal cases in which the offense charged amounts to felony. The court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the state upon petition by, or on behalf of, any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any district court in the state, or before any judge of said courts.

1. JURISDICTION OF SUPREME COURT TO HEAR CONTESTED ELECTION CASE UNDER QUO WARRANTO. McMillan v. Sadler, 25 Nev.

2. APPEAL, CIVIL CASE—FORECLOSURE OF MECHANICS' LIEN. *Dickson v. Corbett*, 10 Nev. 440; *Divorce Suit. Lake v. Lake*, 17 Nev. 338.
3. APPEAL, CRIMINAL CASE. *State v. McCormick*, 14 Nev. 347; *State v. Quinn*, 16 Nev. 89.
4. WRIT OF PROHIBITION. *Low v. Crown Point M. Co.*, 2 Nev. 75; *Walcott v. Wells*, 21 Nev. 47.

Judicial Districts—May Be Altered—Election of District Judges.

116. SEC. 5. The state is hereby divided into nine judicial districts, of which the county of Storey shall constitute the first; the county of Ormsby the second; the county of Lyon the third; the county of Washoe the fourth; the counties of Nye and Churchill the fifth; the county of Humboldt the sixth; the county of Lander the seventh; the county of Douglas the eighth, and the county of Esmeralda the ninth. The county of Roop shall be attached to the county of Washoe for judicial purposes, until otherwise provided by law. The legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of judicial districts and Judges therein. But no such change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office. At the first general election under this constitution, there shall be elected in each of the respective districts (except as in this section hereafter otherwise provided), one District Judge, who shall hold office from and including the first Monday of December, A. D. eighteen hundred and sixty-four, and until the first Monday of January, in the year eighteen hundred and sixty-seven; after the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one District Judge in each of the respective judicial districts (except in the first district, as in this section hereinafter provided). The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of four years (excepting those elected at the said first election) from and including the first Monday of January next succeeding their election and qualification; *provided*, that the first judicial district shall be entitled to, and shall have, three District Judges, who shall possess coextensive and concurrent jurisdiction, and who shall be elected at the same times, in the same manner, and shall hold office for the like terms, as herein prescribed in relation to the Judges in other judicial districts. Any one of said Judges may preside on the impaneling of grand juries, and the presentment and trial on the indictments under such rules and regulations as may be prescribed by law.

Leake v. Blasdel, 6 Nev. 40; *Aude v. Kinkead*, 14 Nev. 117.

Jurisdiction and Powers.

117. SEC. 6. The district courts in the several judicial districts of this state shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand (exclusive of interest), or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the persons and estates of minors and insane persons, and of the action of forcible entry and unlawful detainer; and also in all criminal cases not otherwise provided for by law. They shall, also, have final appellate jurisdiction in cases arising in justices' courts, and such other inferior tribunals as may be established by law. The district courts and the Judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and also shall have power to issue writs of habeas corpus on petition by, or in behalf of, any person held in actual custody in their respective districts.

Hooper v. Meyer, 1 Nev. 433; *Armstrong v. Paul*, 1 Nev. 134; *State v. Rising*, 10 Nev. 97.

Terms of Supreme and District Courts.

118. SEC. 7. The times of holding the supreme court and the district courts,

shall be as fixed by law. The terms of the supreme court shall be held at the seat of government, and the terms of the district courts shall be held at the county seats of their respective counties; *provided*, that in case any county shall be hereafter divided into two or more districts, the legislature may, by law, designate the place of holding courts in such districts.

Justices of the Peace—Jurisdiction Restricted—Criminal Jurisdiction—Concurrent Jurisdiction—Appeals—Courts of Record.

119. SEC. 8. The legislature shall determine the number of Justices of the Peace to be elected in each city and township of the state, and shall fix, by law, their powers, duties, and responsibilities; *provided*, that such justices' courts shall not have jurisdiction of the following cases, viz.: First—Of cases in which the matter in dispute is a money demand, or personal property, and the amount of the demand (exclusive of interest), or the value of the property, exceeds three hundred dollars. Second—Of cases wherein the title to real estate or mining claims, or questions of boundaries to land, is or may be involved; or of cases that shall in any manner conflict with the jurisdiction of the several courts of record in this state; *and, provided further*, that justices' courts shall have such criminal jurisdiction as may be prescribed by law; and the legislature may confer upon said courts jurisdiction, concurring with the district courts, of actions to enforce mechanics' liens, wherein the amount (exclusive of interest) does not exceed three hundred dollars; and also of actions for the possession of lands and tenements, where the relation of landlord and tenant exists, or when such possession has been unlawfully or fraudulently obtained or withheld. The legislature shall also prescribe, by law, the manner and determine the cases, in which appeals may be taken from justices' and other courts. The supreme court, the district courts, and such other courts as the legislature shall designate, shall be courts of record.

Paul v. Beegan, 1 Nev. 327; Bull v. Snodgrass, 4 Nev. 524; Cavanaugh v. Wright, 2 Nev. 166; State v. Rising, 10 Nev. 97; Dickson v. Corbett, 10 Nev. 441; Peacock v. Leonard, 8 Nev. 84.

Municipal Courts.

120. SEC. 9. Provision shall be made, by law, prescribing the powers, duties, and responsibilities of any municipal court that may be established in pursuance of section one of this article; and also fixing, by law, the jurisdiction of said court, so as not to conflict with that of the several courts of record.

Meagher v. Storey Co., 5 Nev. 244.

Judicial Officers Not to Receive Fees.

121. SEC. 10. No judicial officer, except Justices of the Peace, and City Recorders, shall receive, to his own use, any fees or perquisites of office.

Judges Ineligible to Other Offices During Their Term.

122. SEC. 11. The Justices of the Supreme Court and the District Judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected; and all elections or appointments of any such Judges, by the people, legislature or otherwise, during said period, to any office other than judicial, shall be void.

Charge to Juries.

123. SEC. 12. Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

State v. Anderson, 4 Nev. 266; State v. Duffy, 6 Nev. 138; State v. Smith, 10 Nev. 114; State v. McLane, 15 Nev. 366.

Style of Process.

124. SEC. 13. The style of process shall be "The State of Nevada," and all prosecutions shall be conducted in the name and by the authority of the same.

SUMMONS NOT A PROCESS UNDER THIS SECTION. Curtis v. McCullough, 3 Nev. 202; Brook v. Nevada Nickel Syndicate, 24 Nev.

Form of Civil Action.

125. SEC. 14. There shall be but one form of civil action, and law and equity may be administered in the same action.

Judges' Salaries, How Paid.

126. SEC. 15. The Justices of the Supreme Court and District Judges shall each receive, quarterly, for their services, a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, unless in case a vacancy occurs, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of money to pay such compensation; *provided*, that District Judges shall be paid out of the county treasuries of the counties composing their respective districts.

Beatty v. Rhodes, 3 Nev. 240.

Court Fee.

127. SEC. 16. The legislature, at its first session, and from time to time thereafter, shall provide, by law, that upon the institution of each civil action and other proceedings, and also upon the perfecting of an appeal in any civil action or proceeding in the several courts of record in this state, a special court fee or tax shall be advanced to the Clerks of said courts, respectively, by the party or parties bringing such action or proceeding, or taking such appeal; and the money so paid in shall be accounted for by such Clerks, and applied towards the payment of the compensation of the Judges of said courts, as shall be directed by law.

Office, When Vacated.

128. SEC. 17. The legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the state for more than ninety consecutive days, shall be deemed to have vacated his office.

When Officers Superseded.

129. SEC. 18. No judicial officer shall be superseded, nor shall the organization of the several courts of the Territory of Nevada be changed, until the election and qualification of the several officers provided for in this article.

ARTICLE VII.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Impeachment, How Tried—Chief Justice to Preside—Conviction.

130. SECTION 1. The assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected shall be necessary to an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. The Chief Justice of the Supreme Court shall preside over the senate while sitting to try the Governor or Lieutenant-Governor upon impeachment. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

Who Liable to Impeachment.

131. SEC. 2. The Governor, and other state and judicial officers, except Justices of the Peace, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust, under this state. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

Justices of Supreme Court and District Judges May Be Removed.

132. SEC. 3. For any reasonable cause, to be entered on the journals of each house, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District Courts shall be removed from office on the vote of two-thirds of the members elected to each branch of the legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; *provided*, that no member of either branch of the legislature shall be eligible to fill the vacancy occasioned by such removal.

O'Neale v. McClinton, 5 Nev. 329.

Removal from Office of Civil Officer.

133. SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

ARTICLE VIII.**MUNICIPAL AND OTHER CORPORATIONS.****Special Legislation Prohibited.**

134. SECTION 1. The legislature shall pass no special Act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

Virginia v. Chollar-Potosi M. Co., 2 Nev. 80; Rosenstock v. Swift, 11 Nev. 129.

Taxation, What Subject To.

135. SEC. 2. All real property and possessory rights to the same, as well as personal property in this state, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; *provided*, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

Sawyer v. Dooley, 21 Nev. 390.

Dues May Be Secured.

136. SEC. 3. Dues from corporations shall be secured by such means as may be prescribed by law; *provided*, that corporators in corporations formed under the laws of this state shall not be individually liable for the debts or liabilities of such corporations.

Corporations Subject to Laws, etc.

137. SEC. 4. Corporations created by or under the laws of the Territory of Nevada shall be subject to the provisions of such laws until the legislature shall pass laws regulating the same, in pursuance of the provisions of this constitution.

Corporations May Sue.

138. SEC. 5. Corporations may sue and be sued in all courts, in like manner as individuals.

Bank Notes Prohibited.

139. SEC. 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this state, except the federal currency and the notes of banks authorized under the laws of Congress.

Right of Way.

140. SEC. 7. No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor.

counties as the legislature may provide by law; and the legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this state, or the bonds of other states of the Union; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided, further*, that such portions of said interest as may be necessary may be appropriated for the support of the state university.

[As amended. Resolution adopted 1885, 160; agreed to 1887, 168; and ratified at special election February 11, 1889.]

Greenbaum v. Rhodes, 4 Nev. 312; Heydenfeldt v. Daney G. & S. M. Co., 10 Nev. 291; Estate of Henry Sticknoth, 7 Nev. 223; Rosenstock v. Swift, 11 Nev. 125; Klein v. Kinkad, 16 Nev. 194.

University.

152. SEC. 4. The legislature shall provide for the establishment of a state university, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

Normal Schools.

153. SEC. 5. The legislature shall have power to establish normal schools, and such different grades of schools, from the primary department to the university, as in their discretion they may deem necessary, and all professors in said university, or teachers in said schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in article XV of this constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section shall be entitled to receive any portion of the public moneys set apart for school purposes.

Special Tax.

154. SEC. 6. The legislature shall provide a special tax, which shall not exceed two mills on the dollar of all taxable property in the state, in addition to the other means provided for the support and maintenance of said university and common schools.

[As amended. Resolution adopted 1885, 161; agreed to 1887, 169; and ratified at special election February 11, 1889.]

Regents.

155. SEC. 7. The Governor, Secretary of State, and Superintendent of Public Instruction shall, for the first four years, and until their successors are elected and qualified, constitute a Board of Regents, to control and manage the affairs of the university and the funds of the same, under such regulations as may be provided by law. But the legislature shall, at its regular session next preceding the expiration of the term of office of said Board of Regents, provide for the election of a new Board of Regents and define their duties.

Mack v. Torreyson, 21 Nev. 517.

Duties of Regents.

156. SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department in such manner as to make it most effective and useful; *provided*, that all the proceeds of the public lands donated by Act of Congress approved July second, A. D. eighteen hundred and sixty-two, for a college for the benefit of agriculture, the mechanic arts, and including military tactics, shall be invested by the said Board of Regents in a separate fund, to be appropriated exclusively for the benefit of the first named departments to the university, as set forth in section four above; and the legislature shall provide that if, through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace said amount so lost or mis-

appropriated in said fund, so that the principal of said fund shall remain forever undiminished.

Sectarianism Prohibited.

157. SEC. 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution.

No Funds for Sectarian Purposes.

158. SEC. 10. No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purpose.

[Section 10 was added to article XI, by amendment adopted by the legislature 1877 and 1879, and ratified at the general election of 1880.]

Nev. Orphan Asylum v. Hallock, 16 Nev. 373.

ARTICLE XII.

MILITIA.

Organization of Militia.

159. SECTION 1. The legislature shall provide by law for organizing and disciplining the militia of this state, for the effectual encouragement of volunteer corps, and the safe keeping of the public arms.

Sutherland v. Nye, 23 Nev. 99.

Power to Call Out.

160. SEC. 2. The Governor shall have power to call out the militia to execute the laws of the state, or to suppress insurrection or repel invasion.

ARTICLE XIII.

PUBLIC INSTITUTIONS.

Benevolent Institutions to Be Fostered.

161. SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be prescribed by law.

State Prison.

162. SEC. 2. A state prison shall be established and maintained in such manner as may be prescribed by law; and provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders.

Aged and Infirm, Counties to Provide For.

163. SEC. 3. The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age and infirmity, or misfortune, may have claim upon the sympathy and aid of society.

Keyser v. Hallock, 14 Nev. 202.

ARTICLE XIV.

BOUNDARY.

Boundary of State—Territory May Be Added.

164. SECTION 1. The boundary of the State of Nevada shall be as follows: Commencing at a point formed by the intersection of the thirty-eighth degree of longitude west from Washington with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the eastern boundary line of the State of California; thence in a northwesterly direction along said eastern boundary line of the State of California to the forty-third degree of longitude west from Washington; thence north along said forty-third degree of west longitude and said eastern boundary line of the State of Cali-

foria to the forty-second degree of north latitude; thence due east along the said forty-second degree of north latitude to a point formed by its intersection with the aforesaid thirty-eighth degree of longitude west from Washington; thence due south down said thirty-eighth degree of west longitude to the place of beginning. And whensoever Congress shall authorize the addition to the Territory or State of Nevada of any portion of the territory on the easterly border of the foregoing defined limits, not exceeding in extent one degree of longitude, the same shall thereupon be embraced within and become a part of this state. *And, furthermore provided*, that all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this state.

ARTICLE XV.

MISCELLANEOUS PROVISIONS.

Seat of Government.

165. SECTION 1. The seat of government shall be at Carson City, but no appropriation for the erection or purchase of capitol buildings shall be made during the next three years.

Oath of Office.

166. SEC. 2. Members of the legislature, and all officers, executive, judicial, and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I,-----, do solemnly swear (or affirm) that I will support, protect, and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any state convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office. And further, that I will well and faithfully perform all the duties of the office of -----, on which I am about to enter; (if an oath), so help me God; (if an affirmation), under the pains and penalties of perjury."

Who Not Eligible to Office—Females Eligible for School Offices.

167. SEC. 3. No person shall be eligible to any office who is not a qualified elector under this constitution. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or who has acted as second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust, or enjoy the right of suffrage under this constitution. The legislature shall provide by law for giving force and effect to the foregoing provisions of this section; *provided*, that females over the age of twenty-one years, who have resided in this state one year, and in the county or district six months next preceding any election to fill either of said offices, shall be eligible to the offices of Superintendent of Public Schools and School Trustee.

[As amended: Resolution adopted 1887, 162; agreed to 1889, 151; and ratified at special election February 11, 1889.]

Perpetuities.

168. SEC. 4. No perpetuities shall be allowed except for eleemosynary purposes.

General Election.

169. SEC. 5. The general election shall be held on the Tuesday next after the first Monday of November.

Number of Members of Legislature Restricted.

170. SEC. 6. The aggregate number of members of both branches of the legislature shall never exceed seventy-five.

County Offices, Where Held.

171. SEC. 7. All county officers shall hold their offices at the county seat of their respective counties.

Publication of Laws, etc.

172. SEC. 8. The legislature shall provide for the speedy publication of all statute laws of a general nature, and such decisions of the supreme court as it may deem expedient; and all laws and judicial decisions shall be free for publication by any person; *provided*, that no judgment of the supreme court shall take effect and be operative until the opinion of the court in such case shall be filed with the clerk of said court.

Salaries May Be Increased or Diminished.

173. SEC. 9. The legislature may at any time provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salary or compensation is fixed in this constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected.

Crosman v. Nightingill, 1 Nev. 325; Beatty v. Rhodes, 3 Nev. 240; Howell v. LaGrave, 23 Nev. 373.

Officers, How Chosen.

174. SEC. 10. All officers whose election or appointment is not otherwise provided for shall be chosen or appointed as may be prescribed by law.

Rosenstock v. Swift, 11 Nev. 128; Fletcher v. Rhue, 24 Nev.

Tenure of Office May Be Declared.

175. SEC. 11. The tenure of any office not herein provided for may be declared by law, or, when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the legislature shall not create any office, the tenure of which shall be longer than four years, except as herein otherwise provided in this constitution.

State Offices, Where Held.

176. SEC. 12. The Governor, Secretary of State, State Treasurer, State Controller, and Clerk of the Supreme Court shall keep their respective offices at the seat of government.

Enumeration of Inhabitants.

177. SEC. 13. The enumeration of the inhabitants of this state shall be taken, under the direction of the legislature, if deemed necessary, in A. D. eighteen hundred and sixty-five, A. D. eighteen hundred and sixty-seven, A. D. eighteen hundred and seventy-five, and every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States in A. D. eighteen hundred and seventy, and every subsequent ten years, shall serve as the basis of representation in both houses of the legislature.

Plurality of Votes to Constitute Choice.

178. SEC. 14. A plurality of votes given at an election by the people shall constitute a choice, where not otherwise provided by this constitution.

ARTICLE XVI.**AMENDMENTS.****Amendments, How Made.**

179. SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution.

Boyle v. Board of Examiners, 21 Nev. 67; Torreyson v. Grey, 21 Nev. 378.

Revision of Constitution—Convention—Majority of Electors.

180. SEC. 2. If at any time the legislature, by a vote of two-thirds of the members elected to each house, shall determine that it is necessary to cause a revision of this entire constitution, they shall recommend to the electors, at the next election for members of the legislature, to vote for or against a convention; and if it shall appear that a majority of the electors voting at such election shall have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any office or on any question.

ARTICLE XVII.**SCHEDULE.****Rights, etc., to Continue.**

181. SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, including counties, towns, and cities, shall continue as if no change had taken place; and all process which may issue under the authority of the Territory of Nevada, previous to its admission into the Union as one of the United States, shall be as valid as if issued in the name of the State of Nevada.

Laws to Remain in Force.

182. SEC. 2. All laws of the Territory of Nevada, in force at the time of the admission of this state, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the legislature.

State v. Carson Savings Bank, 17 Nev. 155.

Fines, etc., to Inure to State.

183. SEC. 3. All fines, penalties, and forfeitures accruing to the Territory of Nevada, or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.

Recognizances to Remain Valid—Bonds May Be Sued On—Property, Records, etc., of Territory to Vest in State—Criminal Prosecutions—Offenses Committed Against Laws of Territory—Actions, etc., to Be Continued.

184. SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a territorial to a state government, shall remain valid, and shall pass to, and may be prosecuted in the name of, the state; and all bonds executed to the Governor of the territory, or to any other officer or court in his or their official capacity, or to the people of the United States in the territory of Nevada, shall pass to the Governor, or other officer, or court, and his or their successors in office, for the uses therein respectively expressed, and may be sued on and recovery had accordingly; and all property, real, personal or mixed, and all judgments, bonds, specialties, choses in action, claims, and debts of whatsoever description, and all records and public archives of the Territory of Nevada, shall issue to and vest in the State of Nevada, and may be sued for and recovered in the same manner and to the same extent by the State of Nevada, as the same could have been by the Territory of Nevada. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All offenses committed against the laws of the Territory of Nevada before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Nevada with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity, and other legal proceeding which may be pending in any of the courts of the Territory of Nevada at the time of the change from a territorial to a state government, may be continued and transferred to, and determined by any court of the state which shall have jurisdiction of the subject matter thereof. All actions at law and suits in equity, and all other legal proceedings, which may be pending in any of the courts of the Territory of Nevada at the time of a change from a territorial to a state government, shall be continued and transferred to, and may be prosecuted to judgment and execution in any court of the state which shall have jurisdiction of the subject matter thereof; and all books, papers, and records relating to the same shall be transferred in like manner to such court.

Salaries of Officers.

185. SEC. 5. For the first term of office succeeding the formation of a state government the salary of the Governor shall be four thousand dollars per annum; the salary of the Secretary of State shall be three thousand six hundred dollars per annum; the salary of the State Controller shall be three thousand six hundred dollars per annum; the salary of the State Treasurer shall be three thousand six hundred dollars per annum; the salary of the Surveyor-General shall be one thousand dollars per annum; the salary of the Attorney-General shall be two thousand five hundred dollars per annum; the salary of the Superintendent of Public Instruction shall be two thousand dollars per annum; the salary of each Judge of the Supreme Court shall be seven thousand dollars per annum; the salaries of the foregoing officers shall be paid quarterly out of the state treasury. The pay of State Senators and members of assembly shall be eight dollars per day for each day of actual service, and forty cents per mile for mileage going to and returning from the place of meeting. No officer mentioned in this section shall receive any fee or perquisites to his own use for the performance of any duty connected with his office, or for the performance of any additional duty imposed upon him by law.

Crosman v. Nightingill, 1 Nev. 323; *Howell v. LaGrave*, 23 Nev. 373.

Apportionment of Senators and Assemblymen.

186. SEC. 6. Until otherwise provided by law, the apportionment of Senators and Assemblymen in the different counties shall be as follows, to wit: Storey county, four Senators and twelve Assemblymen; Douglas county, one Senator and two Assemblymen; Esmeralda county, two Senators and four Assemblymen; Humboldt county, two Senators and three Assemblymen; Lander county, two Senators and four Assemblymen; Lyon county, one Senator and three Assemblymen; Lyon and Churchill counties, one Senator, jointly; Churchill county, one Assemblyman; Nye county, one Senator and one Assemblyman, Ormsby county, two Senators and three Assemblymen; Washoe and Roop counties, two Senators and three Assemblymen.

Territorial Indebtedness Assumed.

187. SEC. 7. All debts and liabilities of the Territory of Nevada, lawfully incurred, and which remain unpaid at the time of the admission of this state into the Union, shall be assumed by and become the debt of the State of Nevada; *provided*, that the assumption of such indebtedness shall not prevent the state from contracting the additional indebtedness, as provided in section three of article nine of this constitution.

Klein v. Kinkead 16 Nev. 205.

Term of State Officers.

188. SEC. 8. The term of state officers (except judicial) elected at the first election under this constitution, shall continue until the Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until the election and qualification of their successors.

Term of Senators.

189. SEC. 9. The Senators to be elected at the first election under this constitution shall draw lots, so that the term of one-half of the number, as nearly as may be, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six, and the term of the other half shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-eight; *provided*, that in drawing lots for all senatorial terms, the senatorial representation shall be allotted so that in the counties having two or more Senators, the terms thereof shall be divided as nearly as may be, between the long and short terms.

Term of Senators Fixed.

190. SEC. 10. At the general election in A. D. eighteen hundred and sixty-six, and thereafter, the term of Senators shall be for four years from the day succeeding such general election, and members of assembly for two years from the day succeeding such general election, and the terms of Senators shall be allotted by the legislature in long and short terms, as hereinbefore provided, so that one-half the number, as nearly as may be, shall be elected every two years.

Term of Assemblymen.

191. SEC. 11. The term of the members of the assembly elected at the first general election under this constitution, shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-five; and the terms of those elected at the general election in A. D. eighteen hundred and sixty-five shall expire on the day succeeding the general election in A. D. eighteen hundred and sixty-six.

Sessions of Legislature.

192. SEC. 12. The first regular session of the legislature shall commence on the second Monday of December, A. D. eighteen hundred and sixty-four, and the second regular session of the same shall commence on the first Monday of January, A. D. eighteen hundred and sixty-six, and the third regular session of the legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-seven, and the regu-

lar sessions of the legislature shall be held thereafter biennially, commencing on the first Monday of January.

Superseded Sec. 2, Art IV.

County Officers Continued in Office—Township Officers.

193. SEC. 13. All county officers under the laws of the Territory of Nevada, at the time when the constitution shall take effect, whose offices are not inconsistent with the provisions of this constitution, shall continue in office until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified; and all township officers shall continue in office until the expiration of their terms of office, and until their successors are elected and qualified; *provided*, that the Probate Judges of the several counties respectively shall continue in office until the election and qualification of the District Judges of the several counties or judicial districts; *and, provided further*, that the terms of office of the present county officers of Lander county shall expire on the first Monday of January, A. D. eighteen hundred and sixty-five, except the Probate Judge of said county, whose term of office shall expire upon the first Monday of December, A. D. eighteen hundred and sixty-four, and there shall be an election for county officers of Lander county at the general election in November, A. D. eighteen hundred and sixty-four, and the officers then elected shall hold office from the first Monday of January, A. D. eighteen hundred and sixty-five, until the first Monday of January, A. D. eighteen hundred and sixty-seven, and until their successors are elected and qualified.

Territorial Officers Continued in Office Until Time for Qualification of State Officers.

194. SEC. 14. The Governor, Secretary, Treasurer, and Superintendent of Public Instruction of the Territory of Nevada, shall each continue to discharge the duties of their respective offices after the admission of this state into the Union, and until the time designated for the qualification of the above named officers to be elected under the state government; and the Territorial Auditor shall continue to discharge the duties of his said office until the time appointed for the qualification of the State Controller; *provided*, that the said officers shall each receive the salaries and be subject to the restrictions and conditions provided in this constitution; *and, provided further*, that none of them shall receive to his own use any fees or perquisites for the performance of any duty connected with his office.

Terms of Court Determined.

195. SEC. 15. The terms of the supreme court shall, until provision be made by law, be held at such times as the judges of the said court, or a majority of them, may appoint. The first terms of the several district courts (except as hereinafter mentioned), shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four. The first term of the district court in the fifth judicial district shall commence on the first Monday of December, A. D. eighteen hundred and sixty-four, in the county of Nye, and shall commence on the first Monday of January, A. D. eighteen hundred and sixty-five, in the county of Churchill. The terms of the fourth judicial district court shall, until otherwise provided by law, be held at the county seat of Washoe county, and the first term thereof commence on the first Monday of December, A. D. eighteen hundred and sixty-four.

Salaries of District Judges.

196. SEC. 16. The Judges of the several district courts of this state shall be paid as hereinbefore provided, salaries at the following rates per annum: First judicial district (each Judge), six thousand dollars; second judicial district, four thousand dollars; third judicial district, five thousand dollars; fourth judicial district, five thousand dollars; fifth judicial district, thirty-six hundred dollars; sixth judicial district, four thousand dollars; seventh judicial district, six thou-

sand dollars; eighth judicial district, thirty-six hundred dollars; ninth judicial district, five thousand dollars.

Salary of District Judge May Be Changed.

197. SEC. 17. The salary of any Judge in said judicial districts may, by law, be altered or changed, subject to the provisions contained in this constitution.

State Officers, When to Qualify—Expiration of Term.

198. SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and Superintendent of Public Instruction, to be elected at the first election under this constitution, shall each qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election, and shall continue in office until the first Tuesday after the first Monday of January, A. D. eighteen hundred and sixty-seven, and until after the election and qualification of their successors respectively.

Judges, When to Qualify.

199. SEC. 19. The Judges of the Supreme Court and District Judges to be elected at the first election under this constitution shall qualify and enter upon the duties of their respective offices on the first Monday of December succeeding their election.

Officers to Be Commissioned by the Governor—Controller and Treasurer to Execute Bond.

200. SEC. 20. All officers of state, and District Judges first elected under this constitution, shall be commissioned by the Governor of this territory, which commission shall be countersigned by the Secretary of the same, and shall qualify, before entering upon the discharge of their duties, before any officer authorized to administer oaths under the laws of this territory; and also the State Controller and State Treasurer shall each respectively, before they qualify and enter upon the discharge of their duties, execute and deliver to the Secretary of the Territory of Nevada an official bond, made payable to the people of the State of Nevada, in the sum of thirty thousand dollars, to be approved by the Governor of the Territory of Nevada; and shall also execute and deliver to the Secretary of State such other or further official bond or bonds as may be required by law.

Support of County, Town, City and Village Officers.

201. SEC. 21. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such regulations as may be prescribed by law.

Vacancy in Office Filled—Governor Shall Appoint.

202. SEC. 22. In case the office of any Justice of the Supreme Court, District Judge, or other state officer shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

Cases in Probate Courts to Be Transferred to District Courts.

203. SEC. 23. All cases both civil and criminal, which may be pending and undetermined in the probate courts of the several counties at the time when, under the provisions of this constitution, said probate courts are to be abolished, shall be transferred to and determined by the district courts of such counties respectively.

Taxation Restricted.

204. SEC. 24. For the first three years after the adoption of this constitution the legislature shall not levy a tax for state purposes exceeding one per cent per annum on the taxable property of the state; *provided*, the legislature may levy a

special tax, not exceeding one-fourth of one per cent per annum, which shall be appropriated to the payment of the indebtedness of the Territory of Nevada assumed by the State of Nevada, and for that purpose only, until all of said indebtedness is paid.

State ex rel. Nightingill v. Com. Storey Co., 1 Nev. 264; *Klein v. Kinkead*, 16 Nev. 205.

Roop and Washoe Counties.

205. SEC. 25. The county of Roop shall be attached to the county of Washoe for judicial, legislative, revenue and county purposes, until otherwise provided by law.

Sadler v. Tatti, 17 Nev. 434.

Provision for Publication of Debates, etc.

206. SEC. 26. At the first regular session of the legislature to convene under the requirements of this constitution provision shall be made by law for paying for the publication of six hundred copies of the debates and proceedings of this convention, in book form, to be disposed of as the legislature may direct; and the Hon. J. Neely Johnson, President of this convention, shall contract for, and A. J. Marsh, official reporter of this convention, under the direction of the President, shall supervise the publication of such debates and proceedings. Provision shall be made by law at such first session of the legislature for the compensation of the official reporter of this convention, and he shall be paid in coin or its equivalent. He shall receive for his services in reporting the debates and proceedings, fifteen dollars per day during the session of the convention, and seven and one-half dollars additional for each evening session, and thirty cents per folio of one hundred words for preparing the same for publication; and for supervising and indexing such publication, the sum of fifteen dollars per day during the time actually engaged in such service.

ARTICLE XVIII.

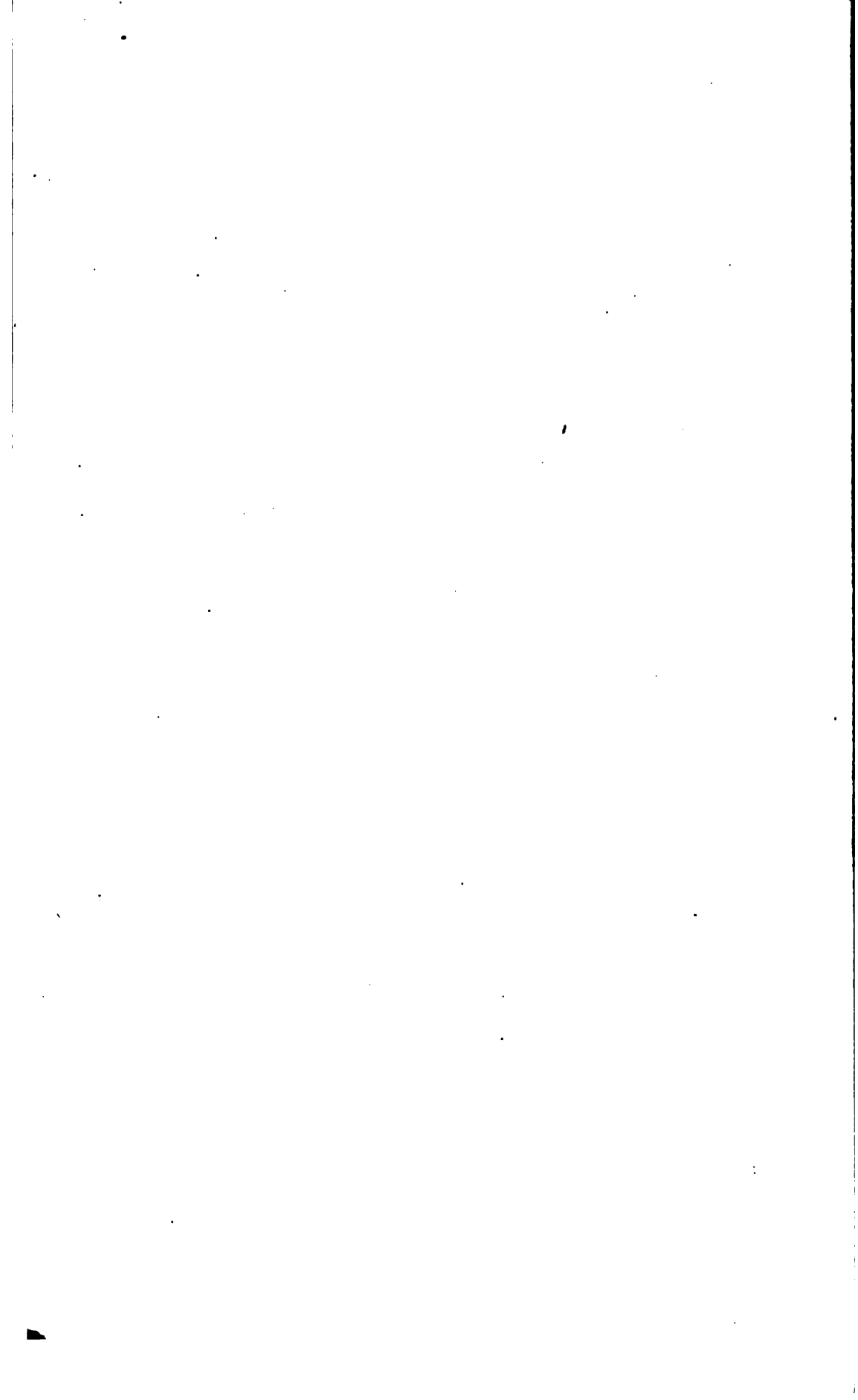
RIGHT OF SUFFRAGE.

Right of Suffrage.

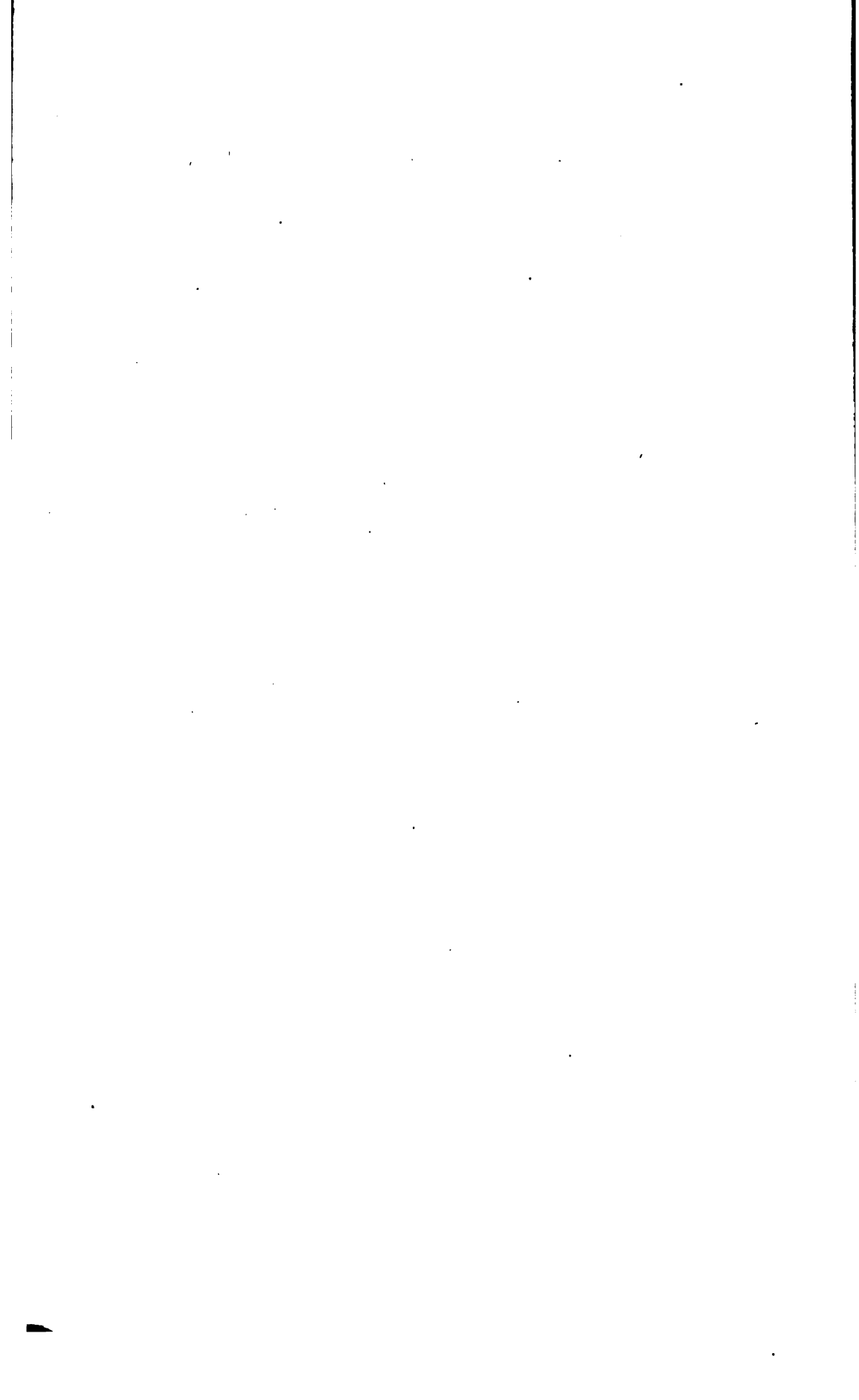
207. SECTION 1. The rights of suffrage and office holding shall not be withheld from any male citizen of the United States by reason of his color or previous condition of servitude.

[Article XVIII was adopted by the legislature 1877 and 1879; ratified at the general election of 1890.]

ELECTION ORDINANCE. Obsolete. *McMillan v. Sadler*, 25 Nev.



COMPILED LAWS OF NEVADA.



COMPILED LAWS OF NEVADA.

MINES AND MINING.

An Act relating to the location, relocation, manner of recording lode and placer claims, mill sites, tunnel rights, amount of work necessary to hold possession of mining claims and the right of coowners therein.

Approved March 16, 1897, 103.

How to Locate.

208. SECTION 1. Any person, a citizen of the United States, or one who has declared his intention to become such, who discovers a vein or lode may locate a claim upon such vein or lode by defining the boundaries of the claim in the manner hereinafter described, and by posting a notice of such location at the point of discovery, which notice must contain: First—The name of the lode or claim. Second—The name of the locator or locators. Third—The date of the location. Fourth—The number of linear feet claimed in length along the course of the vein, each way from the point of discovery, with the width on each side of the center of the vein, and the general course of the vein or lode as near as may be.

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1. NOTICE OF LOCATION OF MINING CLAIM, WHERE TO BE POSTED. In order to hold a mining ledge, it is not necessary that the notice of location should be placed on the ore or any part of the vein or lode; it is sufficient if it be placed in such reasonable proximity and relation to the ledge as, in connection with the work done under it, to give notice to all comers what ledge is intended. *Phillpotts v. Blasdel*, 8 Nev. 61.

NAME, HOW IMPOSED UPON LODE. Placing a notice of location headed with a certain name upon a lode of ore is to christen it with such name. *Id.*

RELOCATION OF MINING CLAIM UNDER ANOTHER NAME. There is no law to prevent a person from relocating his own mining claim by a different name; and if he does so and then conveys it by the latter name, there is no reason why the existence of the former location should invalidate the deed. *Id.*

2. ALIENS CANNOT LOCATE NOR HOLD MINING CLAIMS. An alien who has never declared his intention to become a citizen, is not a qualified locator of mining ground, and he cannot hold a mining claim either by actual possession or by location against one who connects himself with the government title by compliance with the mining law. *Golden Fleece G. & S. M. Co. v. Cable Con. G. & S. M. Co.*, 12 Nev. 312.

LOCAL MINING DISTRICTS AND RULES. The mining laws of the United States recognize and sanction the custom of the miners among organized mining districts to adopt local laws or rules governing the location, recording and working of claim not in conflict with state or federal legislation. *Id.*

Work to Be Performed Within One Hundred and Twenty Days After Posting Notice—Monuments—Boundaries, How Defined.

209. SEC. 2. Before the expiration of one hundred and twenty days from the posting of the notice of location, the locator shall sink a discovery shaft upon the claim to a depth of at least ten feet from the lowest part of the rim of such

shaft at the surface, or deeper if necessary, to show by such work a lode or deposit of mineral in place. A cut or crosscut, or tunnel, which cuts the lode at a depth of ten feet or more, or an open cut of at least ten feet in length along the lode from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft. At the location point, and at each corner and angle of the claim, he shall distinctly mark a tree or rock in place, or shall set a stone, which shall be at least six inches wide and eighteen inches long, firmly in a mound or in the earth, so that at least six inches in height of said stone shall be plainly visible from all sides, or shall substantially build a monument which shall rise at least three feet above the surface, or shall erect a post at least four inches square or four inches in diameter, which must be firmly set in the ground, or in a mound of earth or rock, and must rise at least three feet above the surface. The tree, rock, stone, post or monument at each corner shall be so marked by letters, figures or otherwise, as to indicate its purpose. The posting of location notice and descriptive memoranda of corners (if that method of marking be used) shall be by conspicuously displaying the same, where practicable, and in other cases by such posting as is in accord with the usage and custom of miners. Where it is impracticable or dangerous to life or limb to mark a tree or rock, or set a stone or erect a post or monument precisely upon a corner or angle, then the marking of that corner or angle by means of tree, or rock, or stone, or post, or monument, may be done at the nearest practicable point, in such manner as to indicate the right place. *As amended, Stats. 1899, 93.*

1. THE MINING LAWS OF THE LOCALITY GOVERN THE LOCATION and manner of developing the mines, and when they directly point out how such mining claims must be located, and how the possession once acquired is to be maintained, that course must be strictly pursued. *Mallett v. Uncle Sam G. & S. M. Co.*, 1 Nev. 188. *Affirmed, Gleeson v. Martin White Mining Co.*, 13 Nev. 442.
2. ABOVE SECTION CONSTRUED. *Sissons v. Sommers*, 24 Nev.
3. ASSAYS OF ROCK TAKEN AFTER LOCATION OF CLAIM—COMPETENT EVIDENCE TO PROVE EXISTENCE OF MINERAL VEIN. Assays of rock which was taken from a mining claim, long after the date of its location, are competent evidence, as tending to show that the locators had discovered a vein at the time of the location. *Southern Cross v. Europia M. Co.*, 15 Nev. 385.
4. NO VALID LOCATION of a mining claim can be made until a vein, or deposit, of gold, silver, or metalliferous ore, or rock in place has been discovered. *Overman S. M. Co. v. Corcoran*, 15 Nev. 147.
5. NOTICE OF LOCATION AND RECORD—It is the record of a mining claim, and not the notice of location, that must contain such reference to a natural object or permanent monument as will identify the claim, and only then when the local laws require a record to be made. *Brady v. Husby*, 21 Nev. 453; *Poujade v. Ryan*, 21 Nev. 449.

IDENTIFYING CLAIM—Where the record of a mining claim contains such reference to a natural object or permanent monument as might under any circumstances identify the claim, the record is admissible in evidence, and it becomes a question of fact as to whether such reference is sufficient. *Id.*

PRESUMPTION IN ABSENCE OF EVIDENCE. In the absence of all evidence upon the point it will be presumed that the reference is sufficient for identification. *Id.*

6. JUDICIAL NOTICE—LOCAL MINING RULE. Court cannot take. *Poujade v. Ryan*, 21 Nev. 499.
7. EXTENT OF OWNERSHIP—BURDEN OF PROOF. The presumption, in the first instance, is that the owner of the mine owns all the veins found within his boundary lines, but when there is evidence tending to prove that the vein in controversy apexes outside those lines, this, if sufficient, will rebut that presumption; and as the burden of proving ownership is, when denied, always upon the party alleging it, he must also meet and overcome this evidence, or he will fail in establishing his title. *Jones v. Prospect T. Co.*, 21 Nev. 339.

ROCK IN PLACE—By "rock in place," as used in the mining statutes, is meant rock that is enclosed and embraced in the general mass of the mountain, as distinguished from the float, soil and debris of the surface; and it is not material where the rock or mineral was originally formed or deposited, or that the vein matter is loose, or broken, or disintegrated. *Id.*

8. *Van Valkenburg v. Huff*, 1 Nev. 147; *Overman S. M. Co. v. American M. Co.*, 7 Nev. 312; *Wiell v. Lucerne M. Co.*, 11 Nev. 200.

9. *PATENT WHEN VOID*. *Rose v. Richmond M. Co.*, 17 Nev. 25.

10. *PATENT TO MINING CLAIM*. Right to all the surface. *Abbott v. Primeaux*, 16 Nev. 361.

Recording.

210. SEC. 3. Within ninety days of the date of posting the location notice upon the claim the locator shall record his claim with the Mining District Recorder and the County Recorder of the mining district or county in which such claim is situated by a location certificate which must contain: 1st, the name of the lode or vein; 2d, the name of the locator or locators; 3d, the date of the location and such description of the location of said claim, with reference to some natural object or permanent monument, as will identify the claim; 4th, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with a width on each side of the center of the vein, and the general course of the lode or vein as near as may be; 5th, the dimensions and location of the discovery shaft, or its equivalent, sunk upon the claim; 6th, the location and description of each corner, with the markings thereon. Any record of the location of a lode mining claim which shall not contain all the requirements named in this section shall be void. All records of lode or placer mining claims, mill sites or tunnel rights heretofore made by any Recorder of any mining district or any County Recorder are hereby declared to be valid and to have the same force and effect as records made in pursuance of the provisions of this Act. And any such record, or a copy thereof, duly verified by a Mining Recorder or duly certified by a County Recorder shall be *prima facie* evidence of the facts therein stated.

MINING RECORDS. See Secs. 232, 237, 249, inc.; *Golden Fleece G. & S. M. Co. v. Cable Con. G. & S. M. Co.*, 12 Nev. 312; *Brady v. Husby*, 21 Nev. 453 (ante).

Location Includes.

211. SEC. 4. The location or record of any vein or lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended downward, vertically with all parts of such lodes or veins as continue to dip beyond the side lines of the claim, but shall not include any portion of such lodes, veins, or ledges beyond the end lines of the claim, or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

Van Valkenburg v. Huff, 1 Nev. 142.

End Lines.

212. SEC. 5. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course where it is intersected by the exterior lines.

Jones v. Prospect Tunnel Co., 21 Nev. 339.

Defective Certificate—Relocation.

213. SEC. 6. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing; or shall be desirous of changing his surface boundaries or of taking in any part of an overlapping claim which has been abandoned; or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefits of this Act, such locator or his assigns may file an additional certificate, subject to the provisions of this Act; *provided*, that such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof shall preclude

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the claimant or claimants from proving any such titles as he or they may have held under previous location.

Relocation—Work to Be Done.

214. SEC. 7. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocater may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, in which case the record must give the depth and dimensions of the original discovery shaft at the date of such relocation, and erect new or adopt the old boundaries, renewing the posts or monuments if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken the record may state that the whole or any part of the new location is located as abandoned property. If it is not known to the relocater that his location is on an abandoned claim, then the provisions of this section do not apply.

1. SECOND LOCATION OF MINING GROUND, WHEN NOT AN ABANDONMENT OF THE FIRST—Where one or more of the parties first locating mining ground afterwards make a second location upon the same lode, with the names of other parties added to the notice of location, it appearing that at the time of the second location the ground was undeveloped, and it was not known that both notices were upon the same lode, and it further appearing that the second notice was posted for the express purpose of protecting the original location: *Held*, that the second location did not of itself constitute an abandonment of the first location. *Weill v. Lucerne M. Co.*, 11 Nev. 200.
1. *IDEM.*—The question of abandonment is one of intention. Whether it was the intention of the locators in the first notice to abandon their interest in the ground derived from said first notice of location, was a question of fact for the jury to determine from all the facts and circumstances of the case. *Id.*
2. ABANDONMENT IS A MIXED QUESTION OF LAW AND FACT. *Oreamuno v. Uncle Sam G. & S. M. Co.*, 1 Nev. 179.
3. RELOCATION OF MINING CLAIM—WHEN CANNOT BE MADE. A party cannot locate a valid claim to a lode already located and legally possessed by others. Mining claims are not open to relocation until the rights of a former locator have been abandoned, forfeited or otherwise come to an end. *Rose v. Richmond M. Co.*, 17 Nev. 28.
4. RELOCATION OF MINING GROUND. Where the first claimant who takes up the claim is not a citizen, or has forfeited his right by non-compliance with the mining laws, or abandoned his claim, the mining ground staked off by him, is open to location by any citizen of the United States. *Golden Fleece M. Co. v. Cable Consolidated Co.*, 12 Nev. 312.
5. *Mallett v. Uncle Sam G. & S. M. Co.*, 1 Nev. 188; *Sever v. Gregovich*, 16 Nev. 325; *South End M. Co. v. Tinney*, 22 Nev. 19.

Survey and Certificate of Surveyor Becomes Part of Record.

215. SEC. 8. Where a locator, or his assigns, has the boundaries and corners of his claim established by a United States deputy mineral surveyor, or a licensed surveyor of this state, and his claim connected with a corner of the public or minor surveys of an established initial point, and incorporates into the record of the claim the field notes of such survey, and attaches to and files with such location certificate a certificate of the surveyor, setting forth: First, that said survey was actually made by him, giving the date thereof; second, the name of the claim surveyed and the location thereof; third, that the description incorporated in the declaratory statement is sufficient to identify. Such survey and certificate becomes a part of the record, and such record is *prima facie* evidence of the facts therein contained.

Assessment Work.

216. SEC. 9. The amount of work done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: One hundred dollars annually. In estimating the worth of labor required to be performed upon any mining claim, to hold the same

under the laws of the United States, the value of a day's labor is hereby fixed at the sum of four dollars; *provided, however*, that in the sense of this statute eight hours of labor actually performed upon the mining claim shall constitute a day's labor.

1. **EJECTMENT—WHEN FORFEITURE NEED NOT BE PLEADED.** In an action of ejectment, to recover the possession of a mining claim, where the defendant relies upon a forfeiture by plaintiff, for failure to do the necessary work required by the Act of Congress (Rev. Stat. 2326) such forfeiture need not be specially pleaded. *Steel v. Gold Lead M. Co.*, 18 Nev. 80.
2. **LOCATOR'S RIGHT—ASSESSMENT WORK.** After the purchase price is paid, and the receiver's receipt taken, the locator's right to a patent is vested, and he is not required to do assessment work. *Deno v. Griffin*, 20 Nev. 249.

Affidavit of Work Performed.

217. SEC. 10. Within sixty days after the performance of labor or making of improvements, required by law to be annually performed or made upon any mining claim, the person in whose behalf such labor was performed, or improvements made, or someone in his behalf, shall make and have recorded by the Mining District Recorder or the County Recorder in books kept for that purpose in the mining district or county in which such mining claim is situated, an affidavit setting forth the amount of money expended, or value of labor or improvements made, or both, the character of expenditures or labor or improvements, a description of the claim or part of the claim affected by such expenditures, or labor or improvements, for what year, and the name of the owner or claimant of said claim at whose expense the same was made or performed. Such affidavit, or a copy thereof, duly certified by the County Recorder, shall be *prima facie* evidence of the performance of such labor or the making of such improvements, or both. [See Sec. 231.]

Notice to a Delinquent Coöwner—Penalty.

218. SEC. 11. Whenever a coöwner or coöwners shall give to a delinquent coöwner or coöwners the notice in writing or notice by publication provided for in section 2324, Revised Statutes of the United States, an affidavit of the person giving such notice, stating the time, place, manner of service, and by whom and upon whom such service was made, shall be attached to a true copy of such notice, and such notice and affidavit must be recorded by the Mining District Recorder or the County Recorder, in books kept for that purpose, in the mining district or county in which the mining claim is situated; within ninety days after the giving of such notice, or if such notice is given by publication in a newspaper, there shall be attached to a printed copy of such notice an affidavit of the printer or his foreman or principal clerk of such paper, stating the date of the first, last and each insertion of such notice therein, and when and where the newspaper was published during that time, and the name of such newspaper. Such affidavit and notice shall be recorded as aforesaid within one hundred and eight days after the first publication thereof. The original of such notice and affidavits, or a duly certified copy of the record thereof, shall be evidence that the delinquent mentioned in section 2324 has failed or refused to contribute his proportion of the expenditure required by that section and of the service or publication of said notice; *provided*, the writing or affidavit hereinafter provided for is not of record. If such delinquent shall, within the ninety days required by section 2324 aforesaid, contribute to his coöwner or coöwners his proportion of such expenditures, such coöwner or coöwners shall sign and deliver to the delinquent or delinquents a writing, stating that the delinquent or delinquents by name, has within the time required by section 2324 of the Revised Statutes of the United States contributed his share for the year ----, upon the ----- mine, and further stating therein the district, county and state where the same is situate and the book and page where the location notice is recorded; such writing shall be recorded in the office of the County Recorder of said county. If such coöwner or coöwners shall

fail to sign and deliver such writing to the delinquent or delinquents within twenty days after such contribution, the coöwner or coöwners so failing as aforesaid shall be liable to a penalty of one hundred dollars, to be recovered by any person for the use of the delinquent or delinquents in any court of competent jurisdiction. If such coöwner or coöwners fail to deliver such writing within said twenty days, then the delinquent with two disinterested persons having personal knowledge of such contribution, may make affidavit setting forth in what manner, the amounts of, to whom and upon what mine, such contribution was made. Such affidavit, or a record thereof in the office of the County Recorder of the county in which said mine is situate, shall be *prima facie* evidence of such contribution.

This section supersedes Act of March 5, 1887, 136.

Notice to Claim But One Location.

219. SEC. 12. No notice of location of a lode claim shall claim more than one location, whether the location be made by one or several persons. And if such notice purport to claim more than one location it shall be absolutely void, except as to the first location therein described. And if they are described together, or so that it cannot be told which location is first described, the notice of location shall be void as to all.

Location of Placer Claim, How Made—Relating to United States Survey.

220. SEC. 13. The location of a placer claim shall be made in the following manner: By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of locator or locators, date of location, and number of feet or acres claimed, and by marking the boundaries and the location point in the same manner and by the same means as required by the laws of this state for marking the boundaries of lode claim locations; *provided*, that where the United States survey has been extended over the land embraced in the location, the claim may be taken by legal subdivisions, and, except the marking of the location point as hereinbefore prescribed, no other markings than those of said survey shall be required. *As amended, Stats. 1899, 94.*

Labor to Be Performed Upon Placer Claim—To Be Recorded—Location, When Void.

221. SEC. 14. Within ninety days after the posting of the notice of location of a placer claim, the locator shall perform not less than twenty dollars worth of labor upon the claim for the development thereof, and shall have recorded by the Mining District Recorder and the County Recorder of the district and county in which the claim is situated a certificate which shall state the name of the claim, designating it as a placer claim, name of locator or locators, date of location, number of feet or acres claimed, a description of the claim with regard to some natural object or permanent monument, so as to identify the claim, and the kind and amount of work done by him as herein required, and the place on the claim where said work was done. This certificate, or the record thereof, or a duly certified copy of said record, shall be *prima facie* evidence of the recitals therein. But if such certificate do not state all the facts herein required to be stated, it shall be void. *As amended, Stats. 1899, 94.*

Mill Site.

222. SEC. 15. The proprietor of a vein or lode claim or mine, or the owner of a quartz mill or reduction works, may locate five acres of non-mineral land as a mill site.

Notice to Contain.

223. SEC. 16. The locator of a mill site location shall locate his claim by posting a notice of location thereon, which must contain: 1st, the name of the locator or locators; 2d, the name of the vein or lode claim, or mine, of which he is the proprietor, or the name of the quartz mill or reduction works of which he

is the owner; 3d, the date of the location; 4th, the number of feet or acres claimed; 5th, a description of the claim by such reference to a natural object or permanent monument as shall identify the claim or mill site. And by marking the boundaries of his claim in the same manner as provided in this Act for the marking of the boundaries of a placer mining claim, so far as the same may be applicable thereto.

Locator Shall Record.

224. SEC. 17. The locator of a mill site claim or location shall within thirty days from the date of his location record his location with the Mining District Recorder and the County Recorder of the district or county in which such location is situated, by a location certificate which must be similar in all respects to the one posted on the location.

When Location is Void.

225. SEC. 18. Any record of a mill site location which shall not contain the name of the locator or locators, the name of the vein or lode claim or mine of which the locator is the proprietor, or the name of the quartz mill or reduction works of which the locator is the owner, the number of feet or acres claimed, and such description as shall identify the claim with reasonable certainty, shall be void.

Tunnel Right, How Located.

226. SEC. 19. The locator of a tunnel right or location shall locate his tunnel right or location by posting a notice of location at the face or point of commencement of the tunnel which must contain: 1st, the name of the locator or locators; 2d, the date of the location; 3d, the proposed course or direction of the tunnel; 4th, the height and width thereof; 5th, the position and character of the boundary monuments; 6th, a description of the tunnel by such reference to a natural object or permanent monument as shall identify the claim or tunnel right.

Size of Claim.

227. SEC. 20. The boundary lines of the tunnel shall be established by stakes or monuments placed along such lines at an interval of not more than three hundred feet from the face or point of commencement of the tunnel to the terminus of three thousand feet therefrom. The stakes or monuments shall be of the same size and character as those provided for lode or placer claims in this Act.

Locator Shall Record.

228. SEC. 21. The locator of a tunnel right or location shall within sixty days from the date of the location record his location with the Mining District Recorder and the County Recorder of the county or district in which such location is situated, which must be similar in all respects to the one posted on the location. Any record of a tunnel right or location which shall not contain all the requirements named in this section shall be void.

Blind Lodes or Veins.

229. SEC. 22. All blind lodes, or veins or lodes not previously known to exist, discovered in a tunnel run for the development of a vein or lode, or for the discovery of mines, and within three thousand feet from the face of such tunnel, shall be located upon the surface and held in like manner as other lode claims under the provisions of this Act.

Provisions of this Act Applicable.

230. SEC. 23. The provisions of this Act shall be construed as equally applicable to all classes of locations except where the requirement as to any one class is manifestly inapplicable to any other class or classes.

Certificates Need Not Be Sworn To.

231. SEC. 24. Certificates of location and of labor and improvements necessary to hold claims need not be sworn to, and are not required to be in any specified form, nor to state facts in any specific order; but must truly state the required facts.

To Be Recorded With County Recorder in All Cases.

232. SEC. 25. Where there is no mining district, or where a district having once existed the residence of the officers within the district and their places of business within the district where the books are kept are not publicly known, district recording shall not be required of the locator or claim owner. But recording shall be required in the office of the County Recorder in all cases; as well where there is a District Recorder as where there is none.

Secs. 24 and 25 added Stats. 1899, 95.

An Act to provide for the location of lands containing salt.

Approved February 24, 1885, 172.

Location of Saline Lands.

233. SECTION 1. Any person may locate, claim, and hold not exceeding one hundred and sixty acres of the public lands within this state containing salt or saline matter.

Duty of Persons Locating Salt Lands.

234. SEC. 2. It shall be the duty of any person or persons locating salt lands to have the same surveyed by the County Surveyor of the county in which said lands are located, within thirty days from the date of location; and the Surveyor shall, within thirty days from the completion of said survey, make and deliver to the party employing him to make the survey, a correct description and plat of the lands thus surveyed, and the same shall be recorded in the office of the County Recorder of said county within thirty days from the delivery thereof by the Surveyor.

Location Made Prior to Passage of Act Ratified.

235. SEC. 3. All locations made prior to the passage of this Act upon saline lands are hereby ratified and confirmed to the locators thereof, their heirs and assigns; *provided*, the parties now holding and occupying said lands shall, within sixty days from the passage of this Act, have the same surveyed and recorded as provided in section two of this Act.

When Subject to Relocation.

236. SEC. 4. All persons claiming and holding saline lands under the provisions of this Act shall keep and hold actual possession of said lands by occupying the same, and whenever said lands are abandoned for a period longer than sixty days, the same shall be subject to relocation.

An Act to provide for the better preservation of the mining records in certain mining districts in this state.

Approved March 6, 1879, 80.

County Recorders to Be Ex Officio District Mining Recorders.

237. SECTION 1. In every mining district in this state, in which the seat of government of any county is situated, the County Recorder of said county shall be ex officio District Mining Recorder, subject in the discharge of his duties to such rules, regulations, and compensations as may be now in force or hereafter prescribed by the mining laws of the mining districts respectively to which this Act is applicable. He shall, as such ex officio Mining Recorder, be responsible

on his official bond for the faithful performance of the duties of his office and the correct and safe keeping of all the records thereof, and the correct and safe keeping of the copies of all the records mentioned and referred to in section two of this Act. *As amended, Stats. 1881, 33.*

An Act amendatory of and supplemental to an Act entitled "An Act to provide for the better preservation of the mining records in certain districts in this state," approved March 6, 1879.

Approved February 10, 1881, 33.

SECTION 1 is incorporated in the preceding Act.

Duties of Mining Recorders.

238. SEC. 2. It shall be the duty of each and every Mining Recorder of the several mining districts in the state, on or before the first Monday in January, April, July and October in each year, to transcribe into a suitable book or books, to be provided for that purpose, and to deposit and file with the County Recorders of the respective counties in which said mining districts may be located, a full, true, and correct copy of the mining records of the respective mining districts for the three months next preceding said first Mondays in January, April, July and October, duly certified under oath; *provided*, this section shall not apply to the Mining Recorder created by section one of this Act.

County Commissioners to Provide Books.

239. SEC. 3. There shall be provided by the County Commissioners of the several counties in this state, and furnished to each Mining Recorder, on his application, suitable books, into which the mining records mentioned in section two of this Act shall be transcribed.

Fees to Recorders.

240. SEC. 4. The several Mining Recorders shall receive for services herein required by section two of this Act, one dollar for the transcript of each claim, including the oath, which shall be paid at the time of recording by the parties making the locations.

Copies of Records Introduced in Court in Evidence.

241. SEC. 5. The certified copies of the mining records certified to be deposited and filed as herein provided, shall be received in evidence, and have the same force and effect in all courts as the original.

Penalty for Not Complying.

242. SEC. 6. Any person neglecting or refusing to comply with the provisions of section two of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

243. SEC. 7. This Act shall take effect and be in force from and after the first day of April, A. D. 1881.

Query—Are not the above Acts of 1881 and 1879, as amended in 1881, superseded? See Secs. 210 and 232.

An Act to provide for the better preservation of the mining records of this state, and to repeal all other Acts in conflict with this Act.

Approved February 14, 1885, 27.

Duties of Mining Recorders—Duplicate Notices.

244. SECTION 1. It shall be the duty of each and every Mining Recorder of the several mining districts of the state to require all persons locating and recording

a mining claim to make a duplicate copy of each and every mining notice, which copy the said Mining Recorder shall carefully compare with the original, and mark "duplicate" on its face or margin, and he shall immediately deposit with or transmit the same to the County Recorders of the respective counties in which said mining district may be located.

Fees to Be Collected.

245. SEC. 2. The said District Mining Recorders, at the time of comparing said duplicate notices with the original, shall collect from the locators of said mining claims the sum of one dollar for each and every notice compared, which sum he shall transmit, together with the said duplicate notices, to the County Recorders of the respective counties in which said mining claims shall be located.

Duplicates to Be Filed.

246. SEC. 3. Whenever, owing to the distance of the mining district from the county seat, it becomes inconvenient for the District Mining Recorder to personally deposit the duplicate copy with the County Recorder, then in that case he may forward the same by mail or express, or such other manner as will insure safe transit and delivery to the County Recorder.

Fees for Recording.

247. SEC. 4. The County Recorders of the several counties shall receive for their services for recording each of said duplicate notices mentioned in section two of this Act, the sum of one dollar; *provided*, that in case the location is made outside of an organized mining district or in the absence of a mining recorder in any organized district, then the person or persons making such location shall within ninety days after making such location transmit a duplicate copy of such notice to the Recorder of the county in which the location is made and the Recorder shall record the same for a fee of one dollar. *As amended, Stats. 1897, 77.*

Duplicate Notice to Have Force.

248. SEC. 5. The record of any original or duplicate notice of the location of a mining claim in the office of the County Recorder, as herein provided, shall be received in evidence, and have the same force and effect in the courts of the state, as the original mining district records. *As amended, Stats. 1897, 77.*

Penalty.

249. SEC. 6. Any person neglecting or refusing to comply with the provisions of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by such fine and imprisonment.

For recording of mining claims see Secs. 210 and 232.

An Act for the protection of mines and mining claims.

Approved December 17, 1862, 33.

Manner of Working Mine—Damages, How Assessed.

250. SECTION 1. Any person or persons, company or corporation, being the owner or owners of, or in possession under any lease or contract for the working of any mine or mines within the State of Nevada, shall have the right to institute and maintain an action, as provided by law, for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person or persons, company or corporation, who may be the owner or owners, or in possession of and working such mine or mines under a lease or contract, and to prevent the continuance of working and managing such mine or mines in such manner as to hinder, injure, or by

reason of tunnels, shafts, drifts or excavations, the mode of using, or the character and size of the timbers, used or in any wise endangering the safety of any mine or mines adjacent or adjoining thereto. And any such owner of, or in the possession of any mine or mining claim, who shall enter upon or into, in any manner, any mine or mining claim, the property of another, and mine, extract, excavate or carry away any valuable mineral therefrom, shall be liable to the owner or owners of any such mine or mines trespassed upon in twice the amount of the gross value of all such mineral mined, extracted, excavated or carried away, to be ascertained by an average assay of the excavated material or the ledge from which it is taken. *As amended, Stats. 1891, 37.*

Rogers v. Cooney, 7 Nev. 213; Waters v. Stevenson, 13 Nev. 157; Patchen v. Kelley, 19 Nev. 404

Lien of Judgment and Continuation Thereof.

251. SEC. 2. Any judgment obtained for damages under the provisions of this Act shall become a lien upon all the property of the judgment debtor or debtors, not exempt from execution, in the Territory of Nevada, owned by him, her, or them, or which may afterwards be acquired, as is now provided for by law, which lien shall continue two years, unless the judgment be sooner satisfied.

Survey May Be Applied For—Notice of Application, and How Served—Costs.

252. SEC. 3. Any person or persons named in the first two sections of this Act, shall have the right to apply for and obtain from any district court, or the Judge thereof, within this territory, an order or survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the parties making such application, and that he has reason to believe, and does believe, that the said parties complained of, their agent, or employees, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant. Upon the filing of the affidavit as aforesaid, the court or Judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than five or more than ten days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the court or Judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court, and report the result and conclusions to the court, which report shall be filed with the Clerk of said court. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in the first two sections of this Act, by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed against the defendant as other costs in the suit. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

An Act concerning the powers of corporations.

Approved March 3, 1886, 204.

Corporation May Purchase and Hold Mining Property.

253. SECTION 1. All corporations for the purpose of mining, formed, or which may be hereafter formed, under the laws of the State of Nevada, or which were formed under the laws of the Territory of Nevada, shall have power to purchase and hold such mining property as they may deem meet.

How Exercised.

254. SEC. 2. The power to make such purchases by any corporation shall be exercised only by a majority, in interest, of all the stockholders in any such corporation, or by such person or persons as may, by such majority, be duly appointed to act in their stead.

An Act empowering corporations and associations for mining to sue individual members.

Approved December 19, 1862, 72.

Mining Corporations May Sue Delinquents.

255. SECTION 1. Corporations, and associations, and companies, formed for mining purposes, are hereby authorized, in their corporate or associated name, to institute suits against any one or more of their members who may be delinquent in the payment of their assessments.

Intention of Suit to Be Published.

256. SEC. 2. Before such suit is brought before any court having jurisdiction of the amount, such delinquent, and the amount he may owe, and the intention to institute suit thereon, shall be advertised in a newspaper published in the county where the mining claim is located, and if no newspaper be published in such county, then in a newspaper published in the nearest adjoining county, for at least once a week for one month before such suit is instituted.

Majority of Members to Authorize Suit.

257. SEC. 3. It shall be proved on the trial of such suit that the trustees or managing agents of said corporation, or association, or company, were fully authorized to institute such suit by a majority of the members of said corporation, or association, or company.

Competent Witnesses.

258. SEC. 4. The members of such corporation, association, or company, shall be competent witnesses to establish the assessment and indebtedness of the delinquent member.

Application of Act.

259. SEC. 5. This Act shall apply only to such corporations, associations, and companies, who are actually engaged in mining, and for delinquency in assessments for mining.

An Act to enable mining corporations to consolidate, and defining the manner of such consolidation.

Approved February 26, 1883, 46.

Mining Companies May Consolidate—Consent of Stockholders—Notice by Advertisement—Certificate, Where Filed—How Signed—Certificate, What to Contain.

260. SECTION 1. It shall be lawful for two or more corporations formed, or that may be hereafter formed, under the laws of this state for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets and franchises in such a manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such companies so desiring to consolidate their interests; but no such consolidation shall take place without the consent of stockholders representing two-thirds of the capital stock of each company, and no such consolidation shall in any way relieve such companies or the stockholders thereof, from any and all just debts and liabilities; and in case of such consolidation, due notice of the same shall be given by advertisement for at

least twenty days in one newspaper in the county and state where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said companies shall be; and when the said consolidation is completed a certificate thereof containing the manner and terms of said consolidation shall be filed in the office of the County Clerk of the county in which the original certificate of incorporation of any of said companies shall be filed, and a copy thereof shall be filed in the office of the Secretary of State. Such certificate shall be signed by a majority of each board of directors of the original companies; and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days public notice in some newspaper in the county where its property is situated, a meeting of the stockholders of all of said companies so consolidated, to elect a board of trustees or directors for the consolidated company for the year next ensuing. Said certificate shall also contain the name of the company, the object for which it, the same, has been formed, which shall be the same as the original corporations, the amount of its capital stock, the time of its existence (not to exceed fifty years), the number of shares of which the capital stock shall consist, the number of trustees or directors who shall manage the affairs of the company for the first year, and the name of the city or town in which the principal place of business of the company is to be located.

Stockholders' Consent in Writing—Proxy.

261. SEC. 2. When two or more companies may desire to consolidate in accordance with the provisions of section one of this Act, and shall have given the required notice, as in said section provided, any stockholder consenting thereto shall be required to give his consent in writing, stating the number of shares held by him, and that he is in favor of such consolidation; *provided*, that any and all stock standing in the name of trustees may be voted by such trustees the same as by the owners thereof, and the consent of such trustees shall be equivalent to the consent of such owners; *and, provided further*, that any person holding the general proxy of any stockholder shall be entitled to give or refuse his consent to such consolidation, the same as the owner of such stock for which said proxy is held.

Foreign Corporations May Consolidate With Home Corporations—Agent to Be Appointed, When—Penalty.

262. SEC. 3. The provisions of this Act shall be construed to permit and allow foreign corporations, owning mining property in this state, to consolidate with corporations organized under the laws of this state; *provided*, that in all such cases the principal place of business of such consolidation, when effected, shall be located in the State of Nevada, or in the state where such foreign corporation desiring such consolidation resides, as may be determined by a vote of two-thirds of the stockholders of such consolidation after the same shall be completed, and in case it shall be determined upon such vote being had, to remove the principal place of business of such consolidation out of this state, the certificate provided for in section one shall be amended so as to show the county and state where the principal place of business is located; *and, provided further*, that in case the principal place of business of such corporation shall be removed out of this state, there shall be an agent of such corporation appointed in this state, in the county where its property is situated, upon whom all legal process may be served, and the failure of such corporation to appoint such agent shall subject it to a fine of fifty dollars per day, to be recovered in the name of the State of Nevada, as in other cases of fines and penalties.

An Act for the encouragement of mining.

Approved March 7, 1865, 228.

Mining Companies May Bring Suit.

263. SECTION 1. When three or more persons, owning or claiming as joint tenants in common, or coparceners, a majority of the number of feet, shares, or interests in any mining claim in this state, shall have formed, or shall hereafter form themselves into a corporation or organized association, for the purpose of working and developing such mining claim, and shall actually proceed to work and develop the same, such corporation or association may, without demand, except by commencement of action, institute in any court of competent jurisdiction, suit in its corporate or associate name, as upon an implied contract for the payment of money, against any person not a stockholder in or member of such corporation or association, owning or claiming to own in said mining claim as joint tenant, tenant in common, or coparcener, for his or her proportion of the money actually expended, or indebtedness assumed by such corporation or association, in the actual and necessary working and development of said mining claim.

Money Expended or Indebtedness Assumed.

264. SEC. 2. The proportion of money expended or indebtedness assumed by such corporation or association, and for the payment of which such joint tenant, tenant in common, or coparcener, is made liable under the provisions of this Act, shall be deemed such an amount of money or indebtedness as bears the same proportion to the whole amount of money expended or indebtedness assumed, as the interest in the mining claim owned or claimed by such joint tenant, tenant in common, or coparcener, bears to the whole of the mining claim.

Who May Join in Suit—Issue of Facts—Judgment to Be Separate.

265. SEC. 3. Any number of such joint tenants, tenants in common, or coparceners, may be joined as parties defendant in any suit instituted under the provisions of this Act; but each defendant shall be entitled to plead separately; and when the cause shall be tried by jury, as many of the separate issues of fact as may be agreed upon by the parties may be determined by the same jury. Judgment shall be rendered for or against each defendant separately, and the costs of suit may be apportioned among the several parties defendant, against whom judgment may be rendered, in such manner as to the court may appear just and equitable; *provided*, that in all cases the defendant, prior to the institution of suit under the provisions of this Act, shall be entitled to three weeks' notice of the intention of such corporation or association to institute such suit, which notice may be either personally or by the publication in some newspaper published in the county within which such mining claim is located; and if none be published in said county, then in the nearest adjoining county.

What Summons Shall Specify.

266. SEC. 4. The summons shall specify: First, the amount of money actually expended, or indebtedness assumed, by such corporation or association, in the actual and necessary working and development of said mining claim; and, second, the amount due from each joint tenant, tenant in common, or coparcener, as his or her proportion of such money or indebtedness.

Where Suit to Be Brought—Service of Summons.

267. SEC. 5. All suits instituted under the provisions of this Act shall be brought in the county within which the mining claim may be located; and where the defendant is a non-resident of the county within which suit is brought, but a resident of the state, service of summons may be had personally, as in other cases, or by publication in the same manner as provided by law for service of summons by publication where the defendant is a non-resident of the state and a resident of the State of California; and all of the provisions of law regulating

proceedings in other civil cases shall, so far as the same are applicable, apply to suits instituted under this Act.

Lien.

268. SEC. 6. The amount of money expended or indebtedness assumed, by such corporation or association, as the proportion due from such joint tenant, tenant in common, or coparcener, for the actual and necessary working and development of said mining claim, shall be a lien in favor of such corporation or association upon the interest of such joint tenant, tenant in common, or coparcener, in such mining claim, from the time such money was expended, or indebtedness assumed, by such corporation or association; which lien shall bind such interest from the time of such payment or assumption as against any subsequent purchaser, mortgagee, or other person acquiring a lien upon, or title to, or interest in, the same. Suit may be instituted against the person owning or claiming such interest at the time of the commencement of the action for the recovery of the whole amount due upon such interest; and all judgments rendered in any action instituted under the provisions of this Act, and any execution issued thereon, shall bind and run against such interest, and no other property of the defendant shall be subject to execution on said judgment.

Sales to Be Absolute.

269. SEC. 7. All sales of any interest in a mining claim under an execution issued on a judgment obtained in any suit instituted under the provisions of this Act shall be absolute, and the purchaser shall be entitled to the immediate possession of the interest purchased by him at such sale.

Acts Repealed.

270. SEC. 8. An Act entitled "An Act for the encouragement of mining," passed by the legislative assembly of the Territory of Nevada, approved February twentieth (20th), eighteen hundred and sixty-four (1864), is hereby repealed, and all rights of action accrued under said Act shall be commenced and prosecuted under the provisions of this Act; *provided*, that such repeal shall not in any manner affect any action already commenced under said Act; but all such actions shall be prosecuted thereunder, the same as though said Act was not hereby repealed.

Mallett v. Uncle Sam G. & S. M. Co., 1 Nev. 188.

An Act to secure persons and animals from danger arising from mining and other excavations.

Approved, February 8, 1866, 59.

Safeguards to Be Erected.

271. SECTION 1. Any person or persons, company or corporation, who shall hereafter dig, sink, or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation, or hole, whether used for mining or otherwise, or whether dug, sunk or excavated, for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking, or excavating, or after they may have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences, or other safeguards, and keep the same in good repair, around such works or shafts, sufficient to securely guard against danger to persons and animals, from falling into such shafts or excavations.

Notice of Violation of Preceding Section May Be Filed—What Notice Shall State.

272. SEC. 2. Any person being a resident of the county, and knowing, or having reason to believe, that the provisions of section one of this Act are being or have been violated within such county, may file a notice with any Justice of

the Peace or Police Judge therein, which notice shall be in writing, and shall state: First—The location, as near as may be, of the hole, excavation, or shaft. Second—That the same is dangerous to persons or animals, and has been left, or is being worked, contrary to the provisions of this Act. Third—The name of the person or persons, company or corporation, who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth—If abandoned, and no claimant; and, Fifth—The estimated cost of fencing, or otherwise securing the same against any avoidable accidents.

Upon Filing Notice, the Justice or Judge to Issue an Order, etc.

273. SEC. 3. Upon the filing of the notice, as provided for in the preceding section, the Justice of the Peace, or judge of the police court, shall issue an order, directed to the Sheriff of the county, or to any Constable or City Marshal therein, directing such officer to serve a notice, in manner and form as is prescribed by law for service of summons upon any person or persons, or the authorized agent or agents, of any company or corporation named in the notice on file, as provided in section two of this Act.

What Notice Shall Require—Liable to Fine in Addition to Judgment.

274. SEC. 4. The notice thus served shall require the said persons to appear before the Justice or Judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show, to the satisfaction of the court, that the provisions of this Act have been complied with, or if he or they fail to appear, judgment will be entered against him or them for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this Act, which judgments and fines shall be adjudged and collected as provided for by law.

Suits to Be in the Name of the State.

275. SEC. 5. Suits commenced under the provisions of this Act shall be in the name of the State of Nevada, and all judgments and fines collected shall be paid into the county treasury for county purposes.

County Commissioners Shall Fence Abandoned Excavations—Expenses, How Paid.

276. SEC. 6. If the notice filed with the Justice of the Peace, or Police Judge, as aforesaid, shall state that the excavation, shaft, or hole, has been abandoned, and no person claims the ownership thereof, said Justice of the Peace, or Judge, shall notify the Board of County Commissioners of the county, or either of them, of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid, first, out of the fines and judgments collected in accordance with the provisions of this Act, as other county expenses; *provided*, that nothing herein contained shall be so construed as to compel the County Commissioners to fill up, fence, or otherwise guard, any shaft, excavation, or hole, unless in their discretion the same may be considered dangerous to persons or animals.

An Act for the greater security of life, by providing for the use of safety cages and iron bonnets in vertical shafts where iron mining cages are used, of more than four hundred and fifty feet in depth.

Approved February 28, 1879, 55.

Cages to Be Provided By Mining Companies—Bonnets, How Made.

277. SECTION 1. It shall be unlawful for any person or persons, company or companies, corporation or corporations, after the first day of July, A. D. eighteen

hundred and seventy-nine, to sink or work through any vertical shaft where iron mining cages are used, at a greater depth than four hundred and fifty feet, unless the said shaft shall be provided with an iron bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs, or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet aforesaid shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of said cage in such manner as to afford the greatest protection to life and limb from any matter falling down said shaft.

Failures to Comply and Penalties.

278. SEC. 2. Any person or persons, company or companies, corporation or corporations, after the first day of July, A. D. eighteen hundred and seventy-nine, who shall neglect, fail, or refuse to comply with the provisions of section one of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars.

Damages to Be Recovered.

279. SEC. 3. Nothing contained in this Act shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heir or administrator or administratrix, or any one else now competent to sue in an action of such character.

Act to Take Effect.

280. SEC. 4. This Act shall go into effect on and after the first day of July, A. D. eighteen hundred and seventy-nine.

An Act to encourage mining.

Approved March 3, 1887.

May Enter Upon Mineral Lands—Compensation for Injury.

281. SECTION 1. The several grants made by the United States to the State of Nevada reserved the mineral lands. Sales of such lands made by the state were made subject to such reservation. Any citizen of the United States, or person having declared his intention to become such, may enter upon any mineral lands in this state, notwithstanding the state's selection, and explore for gold, silver, copper, lead, cinnabar, or other valuable mineral, and upon the discovery of such valuable mineral may work and mine the same in pursuance of the local rules and regulations of the miners and the laws of the United States; *provided*, that after a person who has purchased land from the state has made valuable improvements thereon, such improvements shall not be taken or injured without full compensation. But such improvement may be condemned for the uses and purposes of mining in like manner as private property is by law condemned and taken for public use. Mining for gold, silver, copper, lead, cinnabar, and other valuable mineral, is the paramount interest of this state, and is hereby declared to be a public use.

For condemnation of property see Secs. 3918-3930.

State Disclaims Interest in Mineral Lands.

282. SEC. 2. Every contract, patent or deed hereafter made by this State or the authorized agents thereof, shall contain a provision expressly reserving all mines of gold, silver, copper, lead, cinnabar and other valuable minerals that may exist in such land, and the state, for itself and its grantees, hereby disclaims any interest in mineral lands heretofore or hereafter selected by the state on account of any grant from the United States. All persons desiring titles to mines

upon lands which have been selected by the state must obtain such title from the United States under the laws of Congress, notwithstanding such selection. *As amended, Stats. 1897, 36.*

An Act to encourage the mining, milling, smelting, or other reduction of ores in the State of Nevada.

Approved March 1, 1875, 111.

Right of Eminent Domain.

283. SECTION 1. The production and reduction of ores are of vital necessity to the people of this state; are pursuits in which all are interested, and from which all derive a benefit; so the mining, milling, smelting, or other reduction of ores are hereby declared to be for the public use, and the right of eminent domain may be exercised therefor.

Lands for Such Purposes, How Acquired—Verified Petition.

284. SEC. 2. Any person, company, or corporation engaged in mining, milling, smelting, or other reduction of ores, may acquire any real estate, or any right, title, interest, estate, or claim therein or thereto necessary for the purposes of any such business, by means of the special proceedings prescribed in this Act. The said special proceedings shall be substantially as follows: There shall be filed in the Clerk's office of the district court in the county where the real estate is situated, a petition verified according to law, stating therein the name of the person, company, or corporation, presenting the petition, that they are engaged in the business of mining, milling, smelting, or other reduction of ores as aforesaid, the description by the metes and bounds, or by some accurate designation of the tract or tracts of land desired to be appropriated for the purposes of such business, and that a necessity exists therefor, setting forth the names of those in possession of said lands, and of those claiming any right, title, or interest therein, so far as the same can be ascertained by reasonable diligence.

Defendants Upon Petition How Considered.

285. SEC. 3. The persons in occupation of said tract or tracts of land, and those having any right, title, or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

Hearing Upon Petition.

286. SEC. 4. The said court, or the Judge thereof, either in term or vacation, shall, by order, appoint the time for the hearing said petition, and such hearing may be had and all orders in said proceedings may be made by the said court or the Judge thereof, either in term time or vacation.

Notice of Pendency of Petition.

287. SEC. 5. The petitioner shall cause all the occupants and owners of said tract or tracts of lands, so far as the same can be ascertained by reasonable diligence, who reside in said county, to be personally notified of the pendency of the said petition at least ten days before the hearing thereof; and if any of said occupants or owners are unknown, or do not reside in said county, and have not been personally notified of the pendency of the said petition, such petitioner shall cause a notice, stating the filing of said petition, the object thereof, the tracts of land sought to be appropriated, and the time and the place of the hearing of said petition, to be published for four successive weeks, previous to the time of hearing said petition, in a newspaper published in said county, or if none is published in said county, then in a newspaper published nearest to said county.

Hearing Upon Petition—Commissioners, How Selected, Duties, etc.

288. SEC. 6. The defendants to said petition may appear and show cause against said petition on or before the time for the hearing thereof, or such other time as the hearing may be continued to; and upon satisfactory proof being made that the defendants have been duly notified of the pendency of said petition, as herein prescribed, and upon the hearing of the allegations and proofs of the said parties, if the said court or Judge shall be satisfied that the said lands, or any part thereof, are necessary or proper for any of the purposes mentioned in said petition, then such court or Judge shall appoint three competent and disinterested persons as commissioners, one of whom shall be selected from among the persons, if any, named for that purpose by said petitioner, and one shall be selected from among the persons, if any, named on the part of any of the defendants, to ascertain and assess the compensation to be paid to any person or persons having or holding any right, title, or interest in or to each of said tracts of land, for and in consideration of the appropriation of such land to the use of said petitioner. If any vacancy occur among said commissioners, by reason of any one or more of them refusing or neglecting to act, or by any other means, one or more commissioners may be appointed by said court or Judge to fill such vacancy, upon notice being given of such vacancy as said court or Judge may direct.

Meeting of Commissioners, etc.

289. SEC. 7. The said court or Judge shall appoint the time and place for the first meeting of said commissioners, and the time for filing their report, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties. The said commissioners, or a majority of them, shall meet at the time and place, as ordered, and before entering on their duties shall be duly sworn to honestly, faithfully, and impartially perform the duties imposed upon them; and any one of them may issue subpoenas for witnesses for either of said parties, and may administer oaths; and said commissioners may adjourn from place to place, and from time to time, as may be necessary for the proper discharge of their duties.

Powers and Duties of Commissioners—Claims to the Compensation Assessed, How Asserted.

290. SEC. 8. The said commissioners shall proceed to view the several tracts of land, as ordered by said court or Judge, and shall hear the allegations and proof of said parties, and shall ascertain and assess the compensation for the land sought to be appropriated to be paid by said petitioner to the person or persons having or holding any right, title or interest in or to each of the several tracts of land; and such commissioners shall, on or before the time or times as ordered by said court or Judge, file in said Clerk's office their report, signed by them, or a majority of them, setting forth their proceedings in the premises; and they may include all of said tracts in one report, or they may make several reports, including one or more of said tracts of land, if the court or Judge shall so order, or if they shall deem it proper. In case there are adverse or conflicting claims to the compensation assessed for any tract of land, or any right, title, or interest therein thus sought to be appropriated, the parties thus asserting such claim shall present the same by petition to the court or Judge after the report of the commissioners shall have been filed, and the said court or Judge shall proceed to hear and determine the same; and in such cases said petitioner may pay the amount of such compensation to the Clerk of said court, to abide the order of the court or Judge in said proceedings, and said petitioner shall not be liable for any of the costs caused by the adjudication of such conflicting claims.

Objections to Report, How Made and Heard.

291. SEC. 9. The said petitioner, or any of said defendants, if dissatisfied with the report, may, within twenty days after the time of filing said report, and after ten days' notice to the parties interested, move to set aside the report, and

to have a new trial as to any tract of land, on good cause shown therefor, and the said court or Judge shall set aside the report as to such tract of land, and may recommit the matter to the same or to other commissioners, who shall be ordered to proceed in like manner as those first appointed; but such matter shall not be more than twice recommitted to commissioners.

Report, When to Be Confirmed.

292. SEC. 10. Upon the expiration of twenty days after the filing of said report or reports, or at such further time as may be appointed therefor, if the motion and notice shall not have been made and given as aforesaid, and if the proceedings of said commissioners appear to have been correctly and properly done, the said court or Judge shall confirm each of said reports and certify the same thereon.

Reports to Be Recorded—Orders, etc., by Judge—Costs, etc.

293. SEC. 11. Each of said reports and the certificates thereon, upon the compensation therein named being paid, shall be recorded in the Recorder's office of said county by said petitioner. The said court or Judge may make all such orders as may be necessary or proper in the special proceedings provided for in this Act, and shall cause the pleadings and proceedings to be amended, whenever justice shall require it to be done, and shall direct the manner of the service of all orders and notices not herein specially provided for. Costs in such special proceedings shall be taxed by the Clerk at the rates prescribed in the fee bill for said county in civil actions, and also the compensation of the commissioners which shall be fixed by the court or Judge, and shall be paid by said petitioner, except in case where a defendant shall move for a new trial, and the compensation assessed by the commissioners shall not be increased more than ten per cent upon the previous assessment, in which case such defendant shall pay the costs.

Defective Title, New Proceedings Thereon—Petitioner Entitled to Possession.

294. SEC. 12. If the title attempted to be acquired by virtue of the provisions of this Act shall be found to be defective from any cause, such petitioner may again institute proceedings to acquire the same, as in this Act prescribed, and at any stage of such new proceedings, or of any proceedings under this Act, the court or Judge in chambers may rule, or by order in their behalf made, authorize such petitioner, if already in possession, to continue in the use and possession, and if not in possession, to take possession of and use such premises during the pendency of, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such petitioner on account thereof, provided such petitioner shall pay a sufficient sum into court, or give security, to be approved by such court or Judge, to pay the compensation in that behalf when ascertained.

Petitioner Acquires the Land, etc., When.

295. SEC. 13. Upon the filing of the report of the commissioners for record as above provided for, and upon the payment or tender of the compensation and costs as prescribed in this Act, the real estate, or the right, title, or interest therein described in such report, shall become the property of said petitioner for the purpose of the business of mining, milling, smelting, or other reduction of ores as aforesaid, so long as the same shall be continued, and shall be deemed to be acquired for and appropriated to public use.

Payments to Be Made, When.

296. SEC. 14. Such petitioner shall, within thirty days after the final confirmation of the report aforesaid, pay or tender the sum of money ascertained and assessed by said commissioners as and for the compensation of each tract of land described in said report of which the compensation was ordered by said court or Judge to be ascertained and assessed as aforesaid; and said payment or tender may be made to the person or persons owning said tract of land, or having or holding any right, title, or interest therein, according to the amount or extent of

the right, title, or interest owned or held therein by such person or persons; or said payment may be made to the said Clerk for said persons, and the same shall be deemed and taken as a payment to such person or persons, and shall be as effectual for all purposes as if the said sum of money had been personally paid to each and all of the persons entitled thereto.

Realty of Incompetent Person, How Acquired—Voluntary Sale.

297. SEC. 15. If it shall become necessary for any of the purposes aforesaid for such petitioner to acquire any real estate, or any right, title, or interest therein, which is the property of any infant, idiot, or insane person, the guardian, executor, or administrator, as the case may be, shall be subject to process, judgment, and decree as herein provided for persons of full age or capable of contracting, or without such process, judgment, or decree, they may sell and convey the property desired to said petitioner; but neither such sale or conveyance shall be valid for any purpose until the same shall have been approved by the Judge of the proper court, and said Judge is hereby authorized to examine such deeds and conveyances, and if he shall deem the same just and proper, he shall approve the same, and thereupon such conveyances shall have the same force and effect for the purposes in this section mentioned as if the same had been executed by persons competent to convey lands in their own names.

Payment to Person Entitled.

298. SEC. 16. The said court or Judge shall, at the time of the payment of any sum of money to the said Clerk under the provisions of this Act, or at such other time or times as may be ordered, direct and order the same to be paid over to the person or persons who shall upon satisfactory proof appear to be entitled thereto.

Term "Person" Defined.

299. SEC. 17. In all the proceedings in relation to the sale or appropriation of real estate, and ascertaining and receiving the compensation therefor, for the purposes as prescribed in this Act, the term "person" shall be deemed to include municipal or other corporations, and the word "petitioner" to designate any person or number of persons, company or corporation, who may in any case petition as provided in this Act.

Minutes of Proceedings.

300. SEC. 18. The minutes of the proceedings had before said Judge shall be entered by said Clerk in the same manner and with the same force and effect as if the proceedings were had before said court in term time.

For condemnation of land see Secs. 3918-3930.

Dayton Gold & Silver Mining Co. v. W. M. Seawell, 11 Nev. 394; Overman S. Mining Co. v. Corcoran, 15 Nev. 147.

An Act to protect the rights of owners of stock shares and other interests in the mineral and metal yielding mines of this state.

Approved February 21, 1877, 80.

301. [This Act annulled.]

Ex parte Deidesheimer, 14 Nev. 311.

LANDS AND AGRICULTURE.

An Act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada.

Approved March 12, 1885, 101.

State Land Office Created—Office Hours.

302. SECTION 1. For the purpose of selecting and disposing of the lands that have been or may hereafter be granted by the United States to the State of Nevada, including the sixteenth and thirty-sixth sections, and those selected in lieu thereof, in accordance with the terms and conditions of the several grants of land by the United States to the State of Nevada, a state land office is hereby created, of which the Surveyor-General shall be and is hereby made *ex officio* Land Register. He shall, as such Land Register, be required to give bonds in the sum of ten thousand dollars for the faithful performance of his duties, which bonds shall be approved by the Governor and filed in the office of the Secretary of State. The Land Register shall keep his office at the seat of government, and the same shall be kept open on all legal days, between the hours of ten o'clock a. m. and four o'clock p. m., for the transaction of business.

Register to Procure Township Plats—Report to County Assessor.

303. SEC. 2. The Register shall procure from the United States Surveyor-General's office one copy of each township plat of the public surveys now approved or that may hereafter be approved by the proper United States authorities, unless the same shall have been previously obtained; *provided*, that said copies be made upon material of such a quality as the State Land Register may prescribe, the cost of the same not to exceed six dollars each. He shall keep a record of all applications and contracts and of lands which have been or may hereafter be approved to the state, and of all lands which have been sold by the state, which, together with all plats, papers and documents relating to the business of his office, shall be open to public inspection during office hours without fee therefor; and he shall also furnish on or before the first day of July, eighteen hundred and eighty-seven, or as soon thereafter as practicable, a copy of the plat of each township within any county to the County Assessor of such county, to be used by him in performing the duties of his office; and all lands applied for in the state land office thereafter shall be reported by the Register to the County Assessor of the county in which such lands are situated, on or before the first day of May of each year thereafter, and the said Assessor shall immediately mark the same upon the township plats in his office, and shall keep such plats subject to the inspection of all persons interested in examining the same. *As amended, Stats. 1887, 112; 1889, 123.*

Price State Land—Railroad Lands.

304. SEC. 3. The price of all lands applied for after the approval of this Act, is hereby fixed at one dollar and twenty-five (\$1 25) cents per acre, except such lands within the limits of the Central Pacific railroad grant as have heretofore been or may hereafter be approved to the state as double minimum lands, the price of which is hereby fixed at two dollars and fifty (\$2 50) cents per acre, notwithstanding such lands have been or may hereafter be forfeited to the state; *provided*, that in cases of simultaneous applications to purchase the same lands, where neither party claims a preferred right, the price per acre shall be that offered by the highest bidder, as provided by section thirteen of this Act; *and further provided*, that nothing in this Act shall invalidate or change the condition of any completed sale or any contract which may have been entered into between the state and individual purchasers for the sale of any lands. *As amended, Stats. 1887, 32; 1889, 124; 1891, 100.*

Applications to Be Made in Writing.

305. SEC. 4. All applications to purchase lands shall be made in writing to the Land Register, and shall be signed by the applicant or his or her agent, and shall designate in conformity with the United States survey, the tracts of land applied for to purchase, the number of acres, and amount necessary to purchase such land, and the section of this Act under which the applicant wishes to purchase; also residence, postoffice address, and county in which such land is located, and it shall be the duty of the State Land Register to furnish each of the several County Assessors with a statement showing all the lands that have been applied for in their respective counties, and which have not heretofore been shown by such statement, together with the name and address of the applicant or assignee, so far as the same may be known, and on or before the first day of May of each year thereafter, to furnish such Assessor with a statement showing all additional applications and forfeitures since last annual statement. *As amended, Stats. 1887, 118; 1889, 124.*

Non-Mineral Affidavit—Duties Land Register and State Controller—Duties of State Treasurer—Unselectable Lands—Completion of Purchase.

306. SEC. 5. Upon the application of any citizen of the United States or any person who has legally declared his intention to become such, to purchase lands not previously selected by the state, such applicant shall deposit with the State Land Register an affidavit, in due form, by the applicant or some other competent person, made before an officer having an official seal and legally authorized to administer oaths, that the lands described in the application are non-mineral in character, and such affidavit shall not refer to any lands not included in such application. The Land Register shall indorse upon each application the exact time of its receipt in his office, and shall certify to the State Controller that such person is entitled to apply for the lands, describing the same as in the application, which shall accompany the certificate, and said certificate shall state the amount necessary to purchase such lands. The Controller shall thereupon issue his order directing the State Treasurer to receive from such applicant such amount, placing the same in the proper fund, and upon such payment being made, the Treasurer shall issue his receipt in duplicate, describing the lands applied for, and he shall at the same time enter in his abstract of applications the name of the person so applying, description of land, number and date of receipt, and amount paid by the applicant. Upon return of the application with the Treasurer's receipt to the land office, the Register shall file the same, and take prompt measures at the United States land office of the district in which such lands are situated to select, for the state, the lands described in such application. If, during a period of sixty days after the filing of any application, the State Land Register shall remain unable so to select any of the lands therein described, on account of conflicting entries or reservations in the United States land office, he shall cancel such application, so far as it concerns the unselectable lands therein described, and at once certify to the Controller and Treasurer each, that such applicant is entitled to the amount paid by him or her, on said unselectable lands, and the Controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the Treasurer. The State Land Register shall, at the same time, notify the applicant of such cancellation, and that the amount deposited thereon is subject to withdrawal as provided by law, and no subsequent application for lands embraced in such cancelled application shall be certified by the State Land Register until due official notice shall have been received from the intending applicant, that the lands in question are subject to selection. Whenever purchase can be completed, in whole, or in part, upon lands applied for, as in this section provided, the Land Register shall certify the same to the Controller and Treasurer each, and shall at once proceed to complete such sale. Should the Controller, upon the receipt of such certificate, find that any payment had been wrongfully apportioned, he shall issue his order

directing the Treasurer to transfer such amount to its proper fund. If, by reason of the non-approval of the lands to the state, or other cause, the contemplated sale cannot be completed, in whole or in part, then, upon the demand of the applicant or his or her legal agent or assignee, the Land Register shall certify to the Controller and Treasurer each, that such applicant is entitled to the amount paid by him or her, and the Controller shall draw his warrant upon the proper fund for the amount due such applicant, and the same shall be paid by the Treasurer. The term citizen, as used in this Act, is held to mean and include females of lawful age. *As amended, Stats. 1889, 124; 1891, 100.*

To Certify to Controller.

307. SEC. 6. Upon the application of any person as defined in section five of this Act, for the purchase of land after the state has obtained title thereto, should such person be entitled to purchase, the Land Register shall certify the same to the Controller. Said certificate shall be accompanied by such application, as provided in section five of this Act, whereupon the Controller shall issue his order directing the Treasurer to receive the amount necessary to purchase such land, placing the same in the fund specified in the order. Upon payment being made by the applicant, the Treasurer shall issue his receipts in duplicate for the same, and on return of said application, with the receipt, to the state land office, the Register shall thereupon file the same and complete such sale. *As amended, Stats. 1889, 126.*

Fees to Be Deposited With State Land Register.

308. SEC. 7. All applicants for purchase of lands not approved to the state at the time of making application shall deposit with the State Land Register the amount of fees required for selecting the same in the United States local land office: Also the amount of fees required for advertising such selection—if the land so selected or any part thereof—be situated within six miles of a mineral claim or location the amount of which said advertising fee for each application is hereby limited to and fixed at two dollars. The applicant in every instance shall also bear the actual expense of all non-mineral affidavits required by law, or the regulations of the United States general land office. *As amended, Stats. 1889, 126; 1897, 71.*

State Land Register Empowered to Sell—To Enter Into Contract—Conditions—Upon Failure to Pay Annual Interest, Land to Be Subject to Sale—Authorized to Accept Overdue Interest Payment—Duty of Register—When Patent Shall Issue.

309. SEC. 8. In addition to the mode and manner of the sale of state lands, the State Land Register is hereby further empowered to sell and dispose of any agricultural or grazing land, payable as hereinafter specified; that is to say, if any person as defined in section five of this Act, wishing to purchase lands under the provisions of this section, and who shall have made proper application therefor, and duly established his or her right to purchase under the provisions of this Act, the State Land Register is hereby authorized and required to enter into contract to sell such lands upon the receipt of the list certifying the approval of such lands to the state, upon the following conditions, to wit: One-fifth of the purchase price to be paid on application, the remainder of the purchase price to be paid in twenty-five years (25) from the date of contract, with interest at the rate of six per cent (6) per annum, interest payable annually; *provided*, the applicant, or his or her heirs or assigns, may at any time prior to the maturity of such contract make full payment and receive patent in the name of the applicant. All such contracts shall be entered into in writing with the person so purchasing, in which the conditions shall be distinctly expressed that upon the failure to pay the annual interest or principal, when due as stipulated, the land shall immediately thereafter be subject to sale in the same manner and under

the same conditions as though no such prior contract of sale had been made; *provided*, that the State Land Register is hereby authorized to accept an overdue interest payment on any contract during the period of one year from the date required for such interest payment; and also to accept overdue interest payments on any contract heretofore made, where the land has not been reapplied for, *provided* such overdue interest payments be made within one year from the date of approval of this Act; but when application is made for any portion of the land described in any contract on which the annual interest payment is overdue, it shall be the duty of the State Land Register to immediately declare such contract forfeited and to accept and certify such application, and the remainder of the land embraced in such forfeited contract shall unconditionally revert to the state. It shall be the duty of the Register to certify each sale and the terms thereof to the Treasurer. The Register shall certify to the Comptroller each payment, and the Comptroller, upon receipt of each of such certificates, shall issue his order to the Treasurer, apportioning the interest to the fund to which it may belong, as in section five of this Act, and upon payment being made by the applicant of the amount specified in the order, the Treasurer shall issue his receipts in duplicate, and when full payment shall have been made, patent shall issue to the purchaser as provided in section sixteen of this Act. No timber land shall be sold unless the whole purchase price shall be paid at the time of application. *As amended, Stats. 1889, 126; 1899, 124.*

Present Contracts.

310. SEC. 9. All contracts in existence at the time of the passage of this Act, may remain under the same conditions as stipulated in said contracts, or the unpaid principal may be made the subject of a new contract, under the provisions of the foregoing section, at the option of the holder of such contract.

Register to Cause Notices to Be Given.

311. SEC. 10. The State Land Register shall, with reasonable dispatch, cause proper notices to be prepared, requiring the applicant, or his or her agent or attorney, to make full payment, or enter into contract, in the applicant's name, with the State Land Register, as provided in Section 8 of this Act, for the purchase of the land applied for by said applicant, and shall inclose with such notice duly prepared contracts, in duplicate, for the applicant to sign, and shall address the same to such applicant, or his or her agent or attorney, by mail in registered letter, and the Register shall file the postoffice receipts in his office. If, at the expiration of ninety days from the date of mailing of such notices and contracts in duplicate, the person so notified, or his or her legal representative, shall fail to make the required full payment, or to sign and return to the Register such contracts, he or she shall forfeit his or her right to complete the purchase of such land, and the title of the state to such land shall rest as fully in the state as though it had never been applied for, and shall be subject to sale to any person, including the person so forfeiting such land on previous application. Any and all sums of money deposited as partial payments on lands so forfeited shall immediately and unconditionally become the property of the state. *As amended, Stats. 1889, 127.*

Unlocated Land Warrants.

312. SEC. 11. The holder of any unlocated land warrant of this state, heretofore issued, shall have the right to use the same in payment for lands which he or she may desire to purchase from the state, and any person holding any of said warrants for one hundred and sixty acres or less, at the rate of two and one-half dollars per acre, shall be allowed to surrender the same to the State Treasurer in full payment for double the number of acres expressed therein, of land valued at one and one-fourth dollars per acre. And upon the surrender of such land warrant to the Controller by the Treasurer, properly indorsed, the Controller

shall draw his warrant upon the state school fund, in favor of the State Treasurer, for the amount of said land warrant.

SCHOOL LAND WARRANT NOT RECEIVABLE FOR OTHER THAN SCHOOL OR LIEU LAND. *Sharon v. Treadway*, 7 Nev. 241.

ENTRY OF LAND ON UNLOCATED LAND WARRANTS. *Id.*

Moneys Paid on Order from Controller.

313. SEC. 12. All moneys hereafter paid into the treasury on lands shall be paid in on an order from the Controller, and all moneys refunded to applicants shall be drawn out upon a warrant issued by the Controller upon the Treasurer, as provided in section five of this Act. All purchases to be completed, on amounts to be refunded, upon special deposit receipts issued by E. Rhoades, defaulting Treasurer, and still outstanding, shall be disposed of in the following manner: Whenever purchase can be completed, in part or in whole, upon lands thus applied for, the State Land Register shall complete such sale, surrendering to the Controller the Treasurer's receipts issued by E. Rhoades, with his certificate of the completion of such sale, and the Controller shall receive and file the same in his office as vouchers. The Register shall at the same time also certify such sale to the Treasurer. Whenever, by reason of non-approval of lands to the state, or other cause, the contemplated sale cannot be completed, the Land Register shall certify to the Controller that such applicant is entitled to the amount paid, and the Controller shall file such certificate in his office as a voucher, drawing his warrant upon the proper fund for said amount, and the Treasurer shall pay the same. The Land Register shall, at the same time, certify in like manner to the Treasurer. *As amended, Stats. 1889, 127.*

When Two or More Persons Apply for the Same Lands, Proceedings—Artesian Well to Give Preferred Right—Rights of First Applicant—Board to Decide Rights of Contesting Claimants—Contests to Be Certified to District Court, When—Practice in Hearing Contested Cases—Cost of Contest.

314. SEC. 13. An occupant or party in possession shall have a preferred right to purchase all the lands he or she may be entitled to purchase under the provisions of this Act, for the period of six months after the date of filing in the state land office of the official plat or plats covering the survey, by the United States Government, of the land occupied or possessed by him or her. After the filing in the state land office of a formal application for lands, not previously approved to the state, should one or more persons, each claiming a preferred right by reason of occupancy or possession severally apply to purchase the same lands, the Register shall require each of such claimants to make and deposit with his or her application an affidavit affirming occupancy or possession thereof, dating prior to the filing of the first existing application for the lands so claimed. An occupant or party in possession as named in this Act and section, shall be deemed and considered to include any person, as defined in section five of this Act, who, after the approval of this Act, shall commence, and prosecute with due diligence, the sinking of an artesian well upon any unoccupied public lands, subject to selection by the State of Nevada, according to the requirements of an Act to encourage the sinking of artesian wells, approved March 5, 1887, and Acts amendatory thereof and supplementary thereto, and every such person shall be entitled to all the rights and privileges of an occupant or party in possession, as to a preferred right to purchase when he or she shall have complied with the provisions of said Act, concerning said well and the requirements herein written, as to diligence in the prosecution of said work, and upon proof being made before the proper court, as hereinafter provided, that said person has complied therewith, his or her preferred right shall date from the commencement of the sinking of said well. When two or more persons severally apply to purchase the same lands, the first applicant, although not claiming a preferred right to purchase, shall be entitled to appear and contest the right of an applicant to purchase

under the claim of a preferred right. When two or more persons severally apply to purchase the same lands, neither claiming a preferred right, the first applicant shall be allowed to purchase. It shall be the duty of the State Land Register to notify the first existing applicant or his or her attorney or other legal representative, immediately upon the filing of a subsequent application for any portion of the lands embraced in his or her application. Such notice shall be given by registered letter through the United States mails. When two or more persons simultaneously apply to purchase the same lands, neither claiming a preferred right, the determination of the right to purchase shall be submitted to a board consisting of the State Controller, State Treasurer, and State Land Register. The said board shall designate a time to receive bids from the several applicants who have simultaneously applied to purchase the lands in question, and shall proceed to determine and award the right to purchase to the highest bidder. The board shall direct the State Land Register to proceed toward the completion of such highest bidder's application. The money derived from such bids shall be added to the original deposit on each successful application. All cases of contest arising under the provisions of this Act from other causes than simultaneous applications shall be certified, together with all the facts in his possession relating thereto, by the State Land Register, to the district court in and for the county in which the lands in dispute are situated, and the Land Register shall, at the same time, notify the contestants, by registered mail, of the certification of their cause to the proper court. When a cause shall have been certified by the State Land Register to the district court for trial, it shall be the duty of the Clerk of the court in which the action is pending forthwith to notify the respective parties, and, within forty days after proof of service of notice of such certification, the party making the contest shall file and serve upon the adverse party a complaint setting forth the facts upon which he or she claims to be entitled to purchase the lands. The adverse party shall, within twenty days after the service of the complaint, file an answer setting forth the facts relied upon. In case of default, the court shall proceed to hear and determine the controversy as upon default in other cases. The notice, complaint and answer shall be served in the manner now provided by law for service of process in other cases. In case the party making the contest should neglect to file a complaint, as herein provided, the first applicant shall be entitled to a judgment of the court upon the papers certified by the State Land Register, decreeing him or her to be entitled to purchase said lands. In case of the rendition of judgment under the provisions of this section, the Clerk of the court shall immediately transmit to the State Land Register, certified, a copy of said judgment, together with a certified statement of all accrued costs of said contest in said court. All costs in contested cases shall be paid by the parties litigant, as the court or Judge may determine. Upon receiving the certificate of the Clerk of the court, or order of the board, as herein provided, the State Land Register shall proceed with the successful applicant, as if he or she alone had applied, and immediately cancel all other applications for the lands in question. It shall be the duty of the State Land Register to notify each unsuccessful applicant that his or her application has been canceled, and that the amount deposited thereon may be withdrawn from the state treasury, as provided in section five of this Act; *provided*, that the State Land Register may withhold from the amount so deposited by said unsuccessful applicant a sum sufficient to pay and satisfy the costs of the contest in the district court as herein provided, and the State Land Register is hereby directed to transmit to the Clerk of said court, taking his receipt therefor, the amount so withheld, and directing that the same shall be applied by said Clerk to the satisfaction of the costs adjudged against said unsuccessful applicant; *provided, further*, that if said unsuccessful applicant shall fail, for a period of thirty days after the rendition of the judgment by the district court, to make application for the withdrawal of the amount so deposited by him under the provisions of this Act, it shall be the duty of the State Land Register to make application for withdrawal

of the same, and out of said sum so withdrawn shall pay the costs, as herein provided, and remit any balance to said unsuccessful applicant. *As amended, Stats. 1887, 118; 1889, 120; 1891, 101; 1893, 59.*

This section supersedes Act of 1891, 103, regarding formation of board to determine rights of applicants.

1. ACT OF APRIL 2, 1867, ON SAME SUBJECT, BUT NOW REPEALED, CONSTRUED. *O'Neale v. Cleveland*, 3 Nev. 485.
2. CONTESTS FOR PUBLIC LAND are governed by the provisions of the Practice Act so far as applicable. *Burbank v. Rivers*, 20 Nev. 81.

Two-Million-Acre Grant.

315. SEC. 14. All lands which have been or shall be selected under the two-million-acre grant of June sixteenth, eighteen hundred and eighty, may be sold in tracts equal to six hundred and forty acres to each applicant, notwithstanding such applicant may have heretofore purchased, or may hereafter purchase, three hundred and twenty acres of the state, selected under other grants of land to the state. No lands shall be sold in tracts less than the smallest legal subdivision. *As amended, Stats. 1889, 128.*

Register to Select.

316. SEC. 15. It is hereby made the duty of the State Land Register to select as portions of the several grants of land to this state all lands for which money has been deposited under the provisions of this Act. *As amended, Stats. 1889, 128.*

Patent to Land from State.

317. SEC. 16. The title of the state to any lands sold under the provisions of this Act shall be conveyed by patent, free of charge, to the applicant, and none other, except as may be otherwise ordered by a competent court having jurisdiction. All patents shall be in such form as the Attorney-General and Land Register shall jointly prescribe, to be prepared by the Land Register, signed by the Governor, and shall have the great seal of the state affixed by the Secretary of State, and shall be countersigned by the Register. The Secretary of State and State Land Register shall each keep a record of patents issued. *As amended, Stats. 1889, 128.*

Mineral land reserved, Sec. 282.

1. TITLE BY PATENT WIPES OUT ALL FORMER TITLES. *Vansickle v. Haines*, 7 Nev. 249.
2. PATENTS WHEN SUBJECT TO WATER RIGHTS PREVIOUSLY ACQUIRED. *Barnes v. Sabron*, 10 Nev. 218.
3. PATENT ISSUED BY STATE CONVEYS NO TITLE TO MINERAL LAND. *Heydenfeldt v. Daney M. Co.*, 10 Nev. 290.

SEC. 17 superseded by various salary Acts. See "Salaries of State Officers."

Selections Erroneously Made.

318. SEC. 18. The State Land Register is hereby authorized to withdraw from the local and general land offices of the United States all selections of lands that have been or may be erroneously made, at any time before such lands have been listed and approved to the state by the department of the interior. And the Governor is hereby authorized to reconvey, by deeds of relinquishment, all lands that have been or may hereafter be erroneously listed as approved to the state, in such form as the Secretary of the Interior may prescribe. Such deeds of relinquishment shall be duly attested by the Secretary of State, under the seal of his office, and be countersigned by the Register of the state land office; *provided*, that in no case shall any selections of lands be withdrawn, or deed of relinquishment executed, so long as there shall be any existing contract or patent for the same, or any pending litigation respecting the right of title of the state to such lands. Nor in any case shall such lands be conveyed or relinquished, when the same were subject to selection, or where the state's title to such land is valid. When such deeds shall have been executed they shall be forwarded to the Commissioner of the general land office at Washington, D. C. The State Land Register shall,

immediately after forwarding such deeds to the general land office, deduct the number of acres thus reconveyed from the amount of lands charged to the state under her grants from the United States. *As amended, Stats. 1887, 46; 1889, 128.*

Seal of State Land Office.

319. SEC. 19. The impression of the seal of the state land office upon the original or copy of any paper, plat, map, or document emanating from such office, shall impart verity to the same, and such paper, plat, map, or document bearing the impression of such seal, shall be admitted as evidence in any court in this state, and the use of such seal by the State Land Register is hereby authorized.

CERTIFICATE OF REGISTER OF LAND OFFICE—EVIDENCE OF CONVEYANCE OF LAND. *Brown v. Warren, 16 Nev. 228.*

Investment of Funds.

320. SEC. 20. All funds derived from the sale of lands under this Act shall be invested in interest-bearing bonds of this state or of the United States, as required by section three, article eleven, of the constitution, of this state. The proceeds of the sale of lands donated to this state by Act of Congress of July second, eighteen hundred and sixty-two, shall be invested by the Board of Regents, and the proceeds of other lands herein referred to, whenever the sum of five thousand dollars shall have been paid into the state school fund, shall be invested as directed by law.

Board of Examiners to Allow Claims.

321. SEC. 21. All claims and accounts for services, or for expenses authorized by and legitimately incurred in carrying out any of the provisions of this Act, except the salaries of the Register and his deputy, shall be presented by itemized bills to the State Board of Examiners; and when any such claim shall be allowed by said board, they shall indorse thereon their approval of the same, and direct out of what fund or funds the claim so allowed shall be paid. Payment of all such allowed bills shall be made from appropriations made by law of moneys arising from sales of lands under this Act. *As amended, Stats. 1889, 129.*

Acts Repealed.

322. SEC. 22. An Act entitled "An Act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March fifth, eighteen hundred and seventy-three, p. 120; also, an Act supplementary to the foregoing, approved March seventh, eighteen hundred and eighty-one, p. 162; also, an Act to amend an Act entitled "An Act fixing the price of lands within the limits of the Central Pacific Railroad grant," etc., approved February nineteenth, eighteen hundred and eighty-three, p. 42; also, an Act in relation to the sale of certain lands granted by the United States to the State of Nevada, approved March first, eighteen hundred and eighty-three, p. 103; and all other Acts and parts of Acts, so far only as in conflict with the provisions of this Act, are hereby repealed; *provided*, that such repeal shall not divest any parties of any rights heretofore acquired under any of said Acts referred to.

PUBLIC LANDS—EVIDENCE OF TITLE—FUNCTIONS OF REGISTER OF LAND OFFICE—RAILROAD GRANT—PRIOR PRE-EMPTION. *Peers v. Deluchi, 21 Nev. 164.*

An Act to provide for the advertising of certain unapproved lands, fixing the charge therefor, and providing for the expense of affidavits.

Approved March 9, 1899, 59.

Relating to Advertising of Certain Unapproved Lands—Applicant to Bear Actual Expenses.

323. SECTION 1. All applicants for the purchase of land not approved to the State at the time of making application, shall deposit with the State Land Reg-

ister, in addition to the amount of fees required for selecting the same in the United States local land office, the amount of fees required for advertising such selection, if the land so selected, or any part thereof, be situated within a township containing any mineral entry, claim or location, said advertising fees or charges, when a daily newspaper is designated, not to exceed seven dollars for each ten lines of space for sixty-one consecutive days' publication, and where a weekly newspaper is designated as the medium of publication, five dollars for the same space of ten lines, for ten consecutive publications. The applicant in every instance shall also bear the actual expense of all non-mineral affidavits required by law, or by the regulations of the United States general land office.

An Act to provide for the record of patents to lands issued either by the State of Nevada or the United States of America, and other matters relating thereto.

Approved February 9, 1883, 35.

Certified Copies of U. S. and State Land Patents Admitted in Evidence, When Original Recorded.

324. SECTION 1. All patents which have been heretofore, or which may be hereafter issued by either the State of Nevada or by the United States, for lands situate in the State of Nevada, may be recorded as they are issued in the office of the County Recorder of the county in the State of Nevada where said lands are situated; and when so recorded, copies of such records, certified as required by the laws of the State of Nevada, may be used in evidence in any court of the State of Nevada in the same manner and under the same circumstances, and with the same force and effect as certified copies of the records of conveyances of real estate, acknowledged or proven, and certified and recorded in the manner prescribed by the laws of the State of Nevada, may now be used.

An Act defining the rights of applicants for and contractors to purchase land from the State of Nevada, and providing for maintaining certain actions concerning such land.

Approved March 5, 1887, 124.

Right to Exclusive Possession.

325. SECTION 1. Every person who has applied to the State of Nevada to purchase any land from it, or who has contracted with the State of Nevada for such purchase, or who may hereafter apply to or contract with the State of Nevada, in good faith, for the purchase of any of its public land, and who has paid, or shall pay to the proper state officers, the amount of money requisite under such application or contract, shall be deemed and held to have the right to the exclusive possession of the land described in such application or contract; *provided*, no actual adverse possession thereof existed in another at the date of the application.

May Defend Action.

326. SEC. 2. Every person who has contracted with the State of Nevada, in good faith, to purchase any land from it, shall be entitled to maintain or defend any action at law or in equity concerning said land or its possession, which may now be maintained or defended by persons who own land in fee, and every person who has applied or may hereafter apply to the State of Nevada, in good faith, to purchase any land from it, and has paid or shall pay the amount of money which may be required under such application, to the proper state officer, shall be deemed and held to have the right to the exclusive possession of such land, and shall be entitled to maintain and defend any action at law or in equity, concerning such land or the possession thereof, which may now be maintained or defended by persons who own land in fee, *provided*, no actual adverse possession of such land existed in another at the date of such application.

Prospector May Enter and Work Mine.

327. SEC. 3. Nothing in this Act contained shall be so construed as to prevent any person or persons from entering upon such lands for the purpose of prospecting for any of the precious metals, or to prevent the free and economical working of any mine which may be discovered therein.

An Act to provide for the protection of timbered lands.

Approved March 3, 1871, 113.

Unlawful to Cut or Remove Timber, etc.

328. SECTION 1. It shall be unlawful for any person or corporation to cut down or remove, or cause to be cut down or removed, any wood, timber, or trees on or from any land in this state, to which land this state, or any person or corporation has or may have an inchoate title, or any title less than fee simple, and the provisions of this section shall apply to the owner of such inchoate title, or title less than fee simple, the same as to other persons and corporations.

Misdemeanor.

329. SEC. 2. If any owner of an inchoate title to land in this state, or title to such land less than fee simple, or any other person or corporation, shall violate the provisions of the first section of this Act, such person or corporation shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars.

Same.

330. SEC. 3. If any person shall cut down or remove any tree, wood, or timber from any land in this state, to which this state has a fee simple title, or an inchoate title, by reason of grant from the United States, such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine as provided in section two of this Act.

Issue of Fact as to Title to Real Estate—Timber for Domestic Purposes.

331. SEC. 4. If an issue of fact be joined, as to the title to real estate, in any action under the provisions of this Act, such action shall thereupon be certified by the Justice of the Peace in whose court it may be pending to the district court of the same county, and therein tried and finally determined as if the same had been originally commenced therein; *provided*, that nothing in this Act shall be so construed as to affect or impair the provisions of an Act entitled "An Act prescribing the mode of maintaining and defending possessory actions on public lands in this state," approved March ninth, one thousand eight hundred and sixty-five [see Sec. 3814, et seq.]; and *provided further*, that nothing in this Act contained shall be so construed as to prevent the cutting and using by actual settlers upon such lands as are herein specified of such wood as may be necessary for domestic uses, or of such timber as may be necessary for making permanent improvements upon such lands.

An Act ceding the jurisdiction of this state over certain lands to be acquired by the United States.

Approved February 24, 1885, 40.

Ceding Jurisdiction—Exception.

332. SECTION 1. The jurisdiction of this state is hereby ceded to the United States of America over all pieces or parcels of land within the limits of this state that may be selected or acquired by the United States for the purpose of erecting thereon a public building or public buildings for the accommodation of the United States courts, the postoffice and other government offices; and the United States shall have exclusive jurisdiction over the same during the time said

United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state, and the service of any civil process therein or thereon.

Lands Exempt from Taxation.

333. SEC. 2. The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States.

For a similar Act see Stats. 1883, 13.

STATE HAS NO JURISDICTION of crimes committed on land ceded to the United States, only the right to execute criminal process. *Jones v. Mack*, 23 Nev. 359.

An Act to provide for the erection and maintenance of partition fences.

Approved March 6, 1875, 146.

Partition Fences, etc.

334. SECTION 1. Partition fences, between improved lands in this state, may be erected and repaired at the joint expense of the occupants, as hereinafter provided. If any person makes a fence, a partition fence, by joining to or using it as such, he must pay to the person erecting it his proportion of the expense, taking into consideration the condition of such fence at the time it is so joined to or used.

Fence Viewers to Be Appointed; Report Of.

335. SEC. 2. If the parties cannot agree, on application, by either, to a Justice of the election precinct in which such fence is, such Justice must issue his order to three (3) disinterested freeholders of such precinct, not related to either of the parties, to examine such fence and to ascertain the amount to be paid to owner erecting the same; and such freeholders, on a day to be by them appointed, within ten days after the issuance of the order, of which both parties must have notice, must examine such fence, and report to the Justice who issued the order the proportionate amount to be paid to the person erecting the fence; and if such amount is not paid within thirty (30) days after such report, the Justice, on request of the person erecting such fence, must issue execution for such amount, with costs, as provided in the following section, to be collected and returned as other executions. If the fence viewers report that the party making the application is not entitled to any amount to be paid him, then the cost of the application shall be taxed against him, and execution shall be issued therefor.

Fees.

336. SEC. 3. The Justice is entitled to one dollar for issuing the order, and the fence viewers to two dollars and fifty cents each, one-half of which is to be paid by each party; and not being paid within thirty days after the report, execution must issue therefor, with costs for issuing and serving such execution.

Oath of Fence Viewers.

337. SEC. 4. The fence viewers, before proceeding to act, must take an oath, which may be administered by one to the other, to discharge their duties fairly and impartially.

Partition Fences Defined—Improved Lands Defined.

338. SEC. 5. Partition fences, within the meaning of this Act, are fences erected on the line between lands owned or occupied by different persons; and improved lands, within the meaning of this Act, are lands cultivated in grain or vegetables, or set in grass, clover, or alfalfa, from which hay is cut, and town lots.

An Act prescribing rules and regulations for the execution of the trust arising under the Act of Congress entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven.

Approved February 20, 1869, 68.

Corporate Authorities Required to Convey Title.

339. SECTION 1. When the corporate authorities of any city or town, or the Judge of the district court for any county or district in this state, in which any unincorporated town may be situate, shall have entered at the proper land office the land, or any part of the land, settled and occupied as the site of such city or town, pursuant to and by virtue of the Act of the Congress of the United States entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven, it shall be the duty of such corporate authorities or Judge to dispose of and convey the title to such lands, or to the several blocks, lots, parcels, or shares thereof, to the persons hereinafter specified.

Title Conveyed to Whom—Deed to Be Executed so as to Admit of Record.

340. SEC. 2. Any such corporate authorities or Judge holding the title to any such land in trust, as declared in said Act of Congress, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share, or parcel of the same, to the person or persons who shall have, possess, or be entitled to the right of possession or occupancy thereof, according to his, her or their several and respective right or interest in the same, as they existed in law or equity at the time of the entry of such lands, or to his, her or their heirs or assigns; and when any parcel or share of such lands shall be occupied or possessed by one or more persons claiming the same by grant, lease, or sale from one or more other persons, the respective right and interest of such persons, in relation to each other, in the same, shall not be changed or impaired by any such conveyance. Every deed of conveyance made by such corporate authorities or Judge, pursuant to the provisions of this Act, shall be so executed and acknowledged as to admit the same to be recorded.

Notice to Be Given Within Ninety Days After the Receipt of Patent—How Given.

341. SEC. 3. Within ninety days after the receipt by them or him of a patent for such lands, the corporate authorities or Judge entering the same shall give public notice thereof by publishing such notice in a newspaper printed and published in the county in which such city or town shall be situated, or in case there shall not be any newspaper published in said county, then in some newspaper printed and published at the seat of government of this state. Such notice shall be so published once in each week for at least six successive weeks, or thirty days daily; and said notice shall also be posted in six of the most public places in said city or town for thirty days, and shall contain a correct description of the lands so entered, as the same is stated in the patent. *As amended, Stats. 1871, 163.*

Claimant to Sign Statement in Writing—When Debarred—How Made in Certain Cases.

342. SEC. 4. Each and every person, company of persons, associations, or corporations, claiming to be an occupant or occupants, or to have, possess, or be entitled to the right of occupancy or possession of such lands, or any block, lot, share, or parcel thereof, shall, within six months after the first publication of such notice, in person, or by his, her, their, or its duly authorized agent or attorney, sign a statement in writing, containing a correct description of the particular parcel or parts in which he, she, they, or it claim to be entitled to receive, and deliver the same to or into the office of such corporate authorities or Judge; and all persons failing to sign and deliver such statement within the time specified in this section, shall be forever debarred the right of claiming or recovering such lands, or any interest or entail therein, or in any part, parcel, or share thereof, in any court of law or equity; *provided*, that the bar to the right of claiming or

recovering such lands, or any interest or entail therein, as in this section provided, shall not apply to minors or insane persons; and, *provided further*, that all applications for conveyances under this Act for the benefit of minors and insane persons shall be made by the guardian or trustee of such minor or insane person, and all applications for such conveyances for the benefit of married women may be made by their husbands, if in this state; but in case of the absence of the husband from this state, or his refusal to make such application, then such married woman may apply in her own name. *As amended, Stats. 1871, 163.*

When Proceedings to Be Certified to District Court—Clerk to Serve Notice—Conveyance to Be Made Upon Final Determination of Contest.

343. SEC. 5. Should two or more persons claim adversely the title to any lot or lots, or parcels of land within the boundaries of such city or town, the corporate authorities or Judge having entered the same, shall immediately after the time for filing claims has expired, certify and transmit all proceedings and papers had or being before them or him in the premises, to the district court of the county in which said lot or lots, or parcels of land are situated. Upon the receipt of the papers, properly certified, and upon payment of court fee and costs, the Clerk of such district court shall enter the case upon the register of actions, the name of the claimant whose claim was first filed with and by such corporate authorities or Judge being entered upon such register as plaintiff, and the other claimant or claimants as defendant, and thereafter the cause shall proceed in all respects as in cases originally brought in said court. The Clerk shall, upon the receipt by him of such papers and proceedings, serve upon each claimant, his agent, or attorney, a written notice that the claim of such claimant is contested, which notice shall specify the particular lot, block, or parcel so contested, and the name of the adverse claimant. Upon the final determination of such contest, the Clerk of the district court, or supreme court, as the case may be, shall forthwith certify the decision to the corporate authorities or Judge; and upon the receipt of such decision, duly certified, the corporate authorities or Judge shall, as in other cases, make out, execute, and deliver to the party or parties in whose favor the decision is made, a conveyance in fee simple for the lot or lots, or parcels of land awarded in such decision.

Appeal.

344. SEC. 6. Any party in such action deeming himself or herself aggrieved by the determination or judgment of the district court in such cases, may appeal therefrom to the supreme court, as in other cases.

Deed to Be Made Out on Payment of Purchase Money and Expenses—Limitation of Fees and Costs—Proviso—Deeds to Minors or Insane Persons, How Made.

345. SEC. 7. After the issuance of the patent for such lands, it shall be the duty of the corporate authorities or Judge to whom such patent shall issue, to make out, execute, and deliver to each person, company, association, or corporation, who may be legally entitled to the same, a deed in fee simple for such part or parts, lot or lots, of land on payment of his, her, their, or its proper and due proportion of the purchase money for such land, together with his, her, their, or its proportion of such sums as may be necessary to pay for streets, alleys, squares, and public grounds, not to exceed fifty cents for each lot, and also such further sums as shall be a reasonable compensation for executing and acknowledging such deed, not exceeding the sum of three dollars for the first, and one dollar for each additional lot claimed by the same owner, for counsel fee, and for moneys expended in the acquisition of the title and the administration of the trust, including reasonable charges for time and services while employed in such trust, not exceeding the sum of one dollar for each lot; *provided*, that no estimate shall be made for counsel fee, unless the same shall have been actually and necessarily expended; and the foregoing charges shall be full payment for all expenses attending the execution, except for revenue stamps; *provided*, that deeds

made under the provisions of this Act for the benefit of minors and insane persons, shall be to the guardian or trustee of such minor or insane person, as the case may be, in trust for such minor or insane person. *As amended, Stats. 1871, 164.*

If Lots Are Not Conveyed Within One Year, They Are to Be Sold—Proviso.

346. SEC. 8. If all the lots, blocks, shares, or parcels of such land are not legally conveyed to the proper owners before the expiration of one year after the same shall have been passed upon by the corporate authorities or Judge, or in case of contest, within thirty days after such contest shall have been finally determined, the same shall be sold to the highest bidder, and the proceeds applied to the erection of public buildings for the benefit of such city or town, or to the construction of water works for the purpose of conveying water into such city or town, after paying their proportionate share of the purchase money and other expenses, including expenses incurred by publication and sale. Notice of the sale authorized by this section shall be published as is provided for the notice required by section three of this Act; *provided*, that the provisions of this section shall not apply to the sale of real estate belonging to minors or insane persons, except upon an order of court authorizing such sale, which order may be made by the court upon an *ex parte* application, under oath, of the trustee named in this Act. *As amended, Stats. 1877, 186.*

Trustees May Discharge Trust After Going Out of Office.

347. SEC. 9. Any corporate authorities or Judge becoming a trustee under said Act of Congress, who shall, prior to the final execution of their trust, as provided in this Act, go out of office, shall be and they are hereby authorized and empowered to discharge and execute all trusts which they may have assumed, in all respects in the same manner and subject to the same duties and requirements as if they had continued in office.

SEC. 10 superseded. See Sec. 350.

1. **EFFECT OF DEED UNDER CONGRESSIONAL TOWN SITE ACT.** It seems that a deed made by a trustee purporting to act under the law of Congress of May 23, 1844, providing for the disposition of town sites to the occupants is not conclusive in its effect; and if given to one not an occupant or having the right of occupancy as contemplated, that fact may be shown and the deed in such case will fall, as absolutely void and of no effect. *Treadway v. Wilder, 8 Nev. 91; 9 Nev. 67.*
2. **TOWN SITE ACT CONSTRUED—LAW OF CONGRESS PARAMOUNT LAW—UNOCCUPIED LANDS—ACTUAL OCCUPANTS ONLY ENTITLED TO DEED.** *Lechler v. Chapin, 12 Nev. 65.*
3. **DEED FROM TOWN SITE TRUSTEE—SUFFICIENCY OF.** Facts authorizing grantee to receive deed need not be recited. *Terry v. Berry, 13 Nev. 514.*

An Act to amend an Act entitled an Act prescribing rules and regulations for the execution of trust, arising under the Act of Congress entitled "An Act for the relief of the inhabitants of cities and towns on public lands," approved March second, eighteen hundred and sixty-seven; approved February tenth, eighteen hundred and sixty-nine.

Approved March 8, 1871, 163.

SECTIONS 1, 2, and 3 are inserted in the preceding Act in lieu of the sections which they amend.

Claimants Not to Be Affected.

348. SECTION 4. Nothing in this Act shall be so construed as to in any manner affect any of the provisions contained in section four of the Act of which this Act is amendatory, in those cases where notice to claimants prior to the passage of this Act has been published in a newspaper for ten or more successive weeks, and at least six months shall have elapsed since the first publication of said notice; but the trust shall in all particulars be carried out and executed in accordance with the provisions of said section four.

Survey of Town Sites—How Paid For.

349. SEC. 5. In all cases where it shall become necessary in the opinion of the citizens of the town to make a survey of any town site for the purpose of identifying or locating the lots, blocks, squares, streets, or alleys contained within the limits of said town site, a fee of ---- cents for each lot shall be paid to the trustees to defray the expenses of said survey, which said fee shall be paid by the claimants pro rata.

Failure or Disability of Trustee, How Remedied.

350. SEC. 6. In case of death, or ninety days' absence from this state, or other disability of the trustees to execute the trust created by said Act of Congress, it shall be lawful for the corporate authorities or Judge of the district in which any such city or town is situated, who may succeed said trustee in office, to assume said trust, and they or he shall be authorized and they are hereby empowered to execute the same in all respects in the same manner, subject to all the duties and requirements as provided in this Act.

An Act supplementary to an Act entitled an Act prescribing rules and regulations for the execution of the trust arising under the Act of Congress entitled "An Act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven; approved February twentieth, eighteen hundred and sixty-nine.

Approved February 8, 1875, 52.

Trustees of Town Site to Record Patent, etc.—Proof of Payment of Taxes Not Required.

351. SECTION 1. Whenever the corporate authorities or Judge shall have received a certificate of entry, patent, or other evidence of title to the real estate embraced within the limits of any town or city, it shall be the duty of said corporate authorities or Judge to cause the same to be recorded in the land records of the proper county, and to entitle said certificate of entry, patent, or other evidence of title, to be recorded by the County Recorder, it shall not be necessary to present or make, nor shall the County Recorder require any oath or affirmation that all or any part of the taxes for county and state purposes, assessed due, or payable upon said real estate, have been paid.

Sale of Unclaimed Lots or Lands—Disposition of Proceeds.

352. SEC. 2. All lots, blocks, shares, or parcels of land within the boundaries of such town or city, which shall not have been claimed as provided in section four of said Act, approved February twentieth, eighteen hundred and sixty-nine, shall, after the limitation provided in said section four has expired, be sold, and the proceeds of such sale disposed of as provided in section eight of said Act.

WATER AND IRRIGATION.

An Act to define and preserve existing water rights, provide for the storage of surplus water, and regulate the mode of using and acquiring the use of water in the future.

Approved March 16, 1899, 115.

Relative to Water Rights and Storage.

354. SECTION 1. All natural water courses and natural lakes, and the waters thereof which are not held in private ownership, belong to the state, and are subject to regulation and control by the state.

Rights Not Disturbed.

355. SEC. 2. All existing rights to the use of water, whether acquired by appropriation, or otherwise, shall be respected and preserved, and nothing in this Act shall be construed as enlarging, abridging or restricting such rights.

Usufructuary Right Only.

356. SEC. 3. There is no absolute property in the waters of a natural water course or natural lake. No right can be acquired to such waters except as usufructuary right—the right to use it, or to dispose of its use for a beneficial purpose. When the necessity for the use of the water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of a natural water course or lake except at such times as the water is required for a beneficial purpose.

Shall Not Divert Any More Water Than Can Be Economically Used—No Wastage.

357. SEC. 4. No person shall be permitted to divert or use any more of the waters of a natural water course or natural lake than sufficient when properly and economically used, to answer the purpose for which the diversion is made; nor shall any person be permitted to waste any such water, and all surplus water remaining after use, unavoidable wastage excepted, shall be returned to the channel by the persons diverting the same without unreasonable delay or detention.

May Change the Place of Diversion, When.

358. SEC. 5. Any person who has acquired the right to use the water for a beneficial purpose may change the place of diversion and manner of use; *provided*, such change does not substantially injure the rights of others.

Prior Right.

359. SEC. 6. The prior right to the use of the unappropriated waters of the natural water courses and natural lakes, as defined in this Act, may be acquired in the manner provided in this Act, and not otherwise.

Standard of Measure.

360. SEC. 7. In all measurements of water in this state a cubic foot of water per second of time shall be the standard of measurement.

Board of Water Commissioners.

361. SEC. 8. A Board of Water Commissioners is hereby created. The County Commissioners and the County Surveyor of each county in the State of Nevada shall be the board. The Chairman of the Board of County Commissioners shall be the Chairman of the Board of Water Commissioners for each county.

Duties of County Surveyor.

362. SEC. 9. The Board of Water Commissioners shall have authority to require of the County Surveyor of each county the performance of the duties enumerated in this Act and such other duties as they may prescribe for him.

County Surveyor to Measure Streams and Ditches—To Determine the Land Irrigated and Land Suitable for Irrigation—To Prepare Maps—To Make Record—Defective Application—Duty of County Surveyor to Examine and Report to Water Commissioners.

363. SEC. 10. It shall be the duty of the County Surveyor of each county, when so petitioned by a majority of the freeholders whose lands are situated and lying within and under any certain water shed or proposed irrigation or water storage system, who will guarantee by a good and sufficient bond the cost of such survey, or when so requested by any corporation, association or individual proposing to store, appropriate or divert water who shall furnish a like bond as aforesaid, subject to the direction and control of the Board of Water Commissioners of each county, to measure and calculate, as directed by such petition or request, the discharge of streams from which water may be taken for beneficial purposes; to measure and calculate the carrying capacity of ditches diverting water from such streams; to examine [and] approximately determine the land

irrigated and lands suitable for irrigation from the various ditches now in existence; to prepare maps showing the course of the streams, the location of the ditches diverting water, and the lands which have been irrigated and the lands which are suitable for irrigation from the ditches already constructed; to ascertain suitable locations for and the probable cost of construction of irrigating works, such as reservoirs and irrigating canals; to ascertain the location of lands suitable for irrigation; to ascertain and determine the quantity of water used for irrigating purposes and the amount necessary to be used for such purposes; to ascertain and determine whether there be or not any water subject to appropriation, and if so, how much, where, and during what time of the year. It shall be the duty of the County Surveyor of each county to report to the Board of County Water Commissioners of each county the results of his investigations whenever required to do so, and on January first and July first of each year to receive and report upon applications for the appropriation of water, and on receipt of such applications, which shall be of a form prescribed by the Board of Water Commissioners, and furnished by them without cost to the applicant, it shall be the duty of the County Surveyor of each county to make a record thereof in his office, and make a careful examination of such application to ascertain whether it sets forth all the facts necessary to enable him to determine the nature and amount of the proposed appropriation. If the application shall be found in any way defective it shall be returned to the applicant for correction. When the application shall be correct, it shall be the duty of the County Surveyor of each county to examine the same as to whether there is unappropriated water in the source of supply named, as to whether the quantity of water desired is necessary for the purpose named, and as to whether such appropriation is in any way detrimental to the public welfare. After making such examinations he shall make a record of his findings in his office, and report the said application with his findings, to the Board of Water Commissioners of each county at their next regular meeting after completing such examination.

Application to Be Forwarded to County Surveyor—Application to Specify.

364. SEC. 11. Any person hereafter desiring to appropriate water shall forward to the County Surveyor of each county an application in duplicate for permission to make such appropriation. Said application shall set forth the name and postoffice address of such applicant, the source from which the appropriation is to be made, the amount thereof, the location and character of any proposed work in construction therewith, the use to which the water is to be applied, and if for irrigation, a description by legal subdivisions, or if said land has not been surveyed by a practical description of the lands to be irrigated thereby, and any additional facts which may be required by the County Surveyor of each county and by the Board of Water Commissioners of each county.

Board to Meet Quarterly.

365. SEC. 12. The Board of Water Commissioners of each county shall meet quarterly in the office of the County Surveyor of each county on the first Monday of each quarter, and at such other times as may be necessary for the transaction of the business before them.

Duties of Water Commissioners—Power to Approve or Refuse—Applicant Can Appeal to District Court—When Appeal is Perfected—Judge to Fix Time of Hearing Appeal—Priority Right to Be Determined.

366. SEC. 13. It shall be the duty of the Board of Water Commissioners of each county to consider and act upon all applications made under the provisions of this Act for the permission to appropriate water, and they shall have the power to approve or refuse, in whole or in part, such applications; but in no case shall permission to appropriate water be granted except there be a surplus of water remaining in the source of supply over and above the then existing vested and accrued rights. It shall be the duty of the Board of Water Commissioners

of each county, after acting upon any application, to cause such action to be endorsed upon one copy of said application, and file the same in the office of the County Surveyor, and the duplicate copy they shall return to the applicant similarly endorsed, who shall, if the application be endorsed "Approved," be authorized to take the necessary steps to perfect his appropriation in accordance with such endorsement; but if it be endorsed "Refused," the party making such application shall not prosecute such work so long as such refusal shall be in force; *provided*, that an applicant feeling himself aggrieved by any endorsement made by the Board of Water Commissioners of each county upon his application may, within sixty days, take an appeal therefrom to the District Court of the county in which is situated the point of diversion of the proposed appropriation. Such appeal shall be perfected when the applicant shall have filed in the office of the Clerk of such district court a copy of the order appealed from, certified by the County Surveyor as a true copy, together with a petition to such court setting forth appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proofs as shall be adduced by applicant, and such like proofs as shall be adduced by the Board of Water Commissioners, or some person duly authorized in their behalf. Upon the filing of the petition on appeal, it shall be the duty of the Clerk of the district court to inform the Judge thereof, who shall fix the time to hear and determine such appeal, and the Clerk shall give notice thereof not less than twenty nor more than thirty days from the date of such notice to the Board of Water Commissioners and to appellant, which notice shall be served upon the respective parties, as in other cases. The district court on such appeal shall hear and determine the same, and by its judgment determine as to the priority right of each applicant to such unappropriated water.

Fee.

367. SEC. 14. For recording each application provided for in this Act the County Surveyor of each county shall be entitled to receive a fee of one (\$1) dollar and for each certificate required from him, as in this Act provided, he shall be entitled to receive a fee of one dollar.

Water Commissioners—Certificate to County Recorder—To Specify What.

368. SEC. 15. Upon it being made to appear to the satisfaction of the Board of Water Commissioners that any appropriation made in pursuance of the application in this Act provided for has been perfected in accordance with such application and the endorsement thereon by the Board of Water Commissioners, it shall be their duty to send one to the County Recorder of the county in which such appropriation shall have been made, a certificate setting forth the name and postoffice address of the appropriator, the purpose for which said appropriation is made, the place where the same is to be used, and if for irrigation a description of the land to be irrigated, by legal subdivisions or practical description; also the date of appropriation, which date shall be the date of filing the original application in the County Surveyor's office. Said certificate shall be recorded in the office of the County Recorder, in a book specially prepared and kept for that purpose, and at the expense of the party in whose favor it is issued.

Construction of Dams—To Be Approved by Water Commissioners—Can Appeal to District Court.

369. SEC. 16. Any person desiring to construct a dam for the purpose of storing, appropriating or diverting any of the waters of this State, where the same is to be more than ten feet in height, shall submit plans and specifications of the proposed work to the Board of Water Commissioners for their approval, and no rights of any kind under this Act shall be deemed to be obtained when such plans and specifications shall not have been approved; *provided*, that in case the board shall fail to approve such plans and specifications, any person aggrieved thereby may appeal from the decision of the board to the district court of the county in which it is desired to construct said dam, upon the same manner and upon the same terms as are prescribed in section thirteen of this Act.

Blanks to Be Printed in State Printing Office.

370. SEC. 17. All blank forms required to be furnished by the Board of Water Commissioners of each county, as provided in this Act, shall be printed in the state printing office at the expense of the state.

Per Diem of County Surveyor.

371. SEC. 18. The County Surveyor of each county shall receive as compensation five (\$5) dollars per day for each day's work, to be paid by applicant.

Misdemeanor—Penalty.

372. SEC. 19. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not to exceed three hundred and fifty (\$350) dollars, or by imprisonment in the county jail not exceeding thirty (30) days, or by both such fine and imprisonment, at the discretion of the court.

Application of Act.

373. SEC. 20. It is left to the discretion of the Boards of County Commissioners severally, whether such county shall avail itself of the provisions of this Act, as to forming a Board of Water Commissioners.

UNDER THE DOCTRINE CONTROLLING WATER RIGHTS PRIOR TO THE ADOPTION OF THE ABOVE . STATUTE REFERENCE IS MADE TO THE FOLLOWING DECISIONS:

1. WATER RIGHTS, PRIOR APPROPRIATION. Right to running water on public lands of U.S. for purposes of irrigation can be acquired by prior appropriation as against parties not having the government title. *Barnes v. Sabron*, 10 Nev. 217.

REASONABLE USE OF WATER. The first appropriator is only entitled to as much water as is necessary to irrigate his land, and is bound, under the law, to make a reasonable use of it. What is a reasonable use depends upon the circumstances of each case. *Id.*

WATER COURSE, WHAT CONSTITUTES. *Id.*

PATENTS, WHEN SUBJECT TO WATER RIGHTS PREVIOUSLY ACQUIRED. *Id.*

CAPACITY OF DITCHES—APPROPRIATION FOR PARTICULAR PERIOD OF TIME. *Id.*

2. PRIORITY OF APPROPRIATION GIVES SUPERIOR RIGHT. When right not based on ownership of soil. *Lobdell v. Simpson*, 2 Nev. 274; *Ophir M. Co. v. Carpenter*, 4 Nev. 534.

3. RIGHT TO USE OF WATER AS DISTINCT FROM LAND. Running water, as long as it continues to flow in its natural channel, cannot be made the subject of private ownership except as a right incident to property in land; but a right may be acquired to its use by appropriation, which will be regarded and protected as property. *Dalton v. Bowker*, 8 Nev. 190.

4. AMOUNT OF WATER USED.—The amount of water to which the first appropriator is entitled must be limited to the amount actually applied to the purpose of irrigation. *Simpson v. Williams*, 18 Nev. 432.

5. DIVERSION OF WATER ON PUBLIC LAND CONFERS NO RIGHT AGAINST GOVERNMENT—RIGHT TO NATURAL FLOW OF WATER NOT AFFECTED BY QUESTION OF USE—RIGHTS OF RIPARIAN PROPRIETORS. *Vansickle v. Haines*, 7 Nev. 249.

6. MERE POSSESSOR OF PUBLIC LAND HAS NO RIPARIAN RIGHTS. *Lake v. Tolles*, 8 Nev. 236.

7. PERCOLATING WATER A PART OF THE SOIL—RIGHT OF OWNER OF LAND TO DIG FOR WATER IN IT. *Mosier v. Caldwell*, 7 Nev. 336.

8. ACTION FOR DIVERSION OF WATER—VINDICATION AND PRESERVATION OF A RIGHT. *Brown v. Ashley*, 16 Nev. 311.

9. PRIOR APPROPRIATION OF WATER gives the better right to running water upon the public lands to the extent of the appropriation. *Strait v. Brown*, 16 Nev. 317.

DISTINCTION BETWEEN RUNNING WATER AND WATER PERCOLATING THROUGH THE SOIL. *Id.*

10. PRESCRIPTION—DEFENSE OF—PROOF. In order to establish a right by prescription to the use of water, the claimant's use and enjoyment thereof, must have been uninterrupted, adverse, under claim of right and with the knowledge of the owner. *Authors v. Bryant*, 22 Nev. 242.

WATER—IRRIGATION—DECREE CONCERNING. No subject is perhaps so prolific of controversies as the right to the use of water for irrigation purposes by different claimants, and a decree concerning it should be as certain as the use of language can make it. *Id.*

11. EFFECT OF ACT OF CONGRESS OF JULY 26, 1866—COMMON LAW NOT APPLICABLE—PRIOR APPROPRIATION—REASONABLE USE OF WATER. (Vansickle v. Haines, 7 Nev. 249, overruled). Jones v. Adams, 19 Nev. 78; Reno S. Works v. Stevenson, 20 Nev. 269.
12. COMPLETION OF APPROPRIATION—LAW GIVES REASONABLE TIME FOR. Ophir M. Co. v. Carpenter, 4 Nev. 534; Simpson v. Williams, 18 Nev. 432; Irwin v. Strait, 18 Nev. 436.
13. FLOW OF WATER—RIGHTS OF UPPER AND LOWER LAND OWNERS—EASEMENT, SERVITUDE. Damage caused by natural flow is *damnum absque injuria*, not so when flow is caused by man. Boynton v. Longley, 19 Nev. 69.
14. FLOW OF SURFACE WATER. Easement not acquired. Blaisdell v. Stephens, 14 Nev. 17.
15. NOTICE OF AMOUNT OF WATER NEEDED. Estoppel. Brown v. Evans, 18 Nev. 141.
16. APPROPRIATION OF WATER BY TRESPASSER. Water does not pass with land. Smith v. Logan, 18 Nev. 149.
17. SUIT FOR DAMAGES AND INJUNCTION FOR DIVERSION OF WATER. Unnecessary to allege riparian ownership; prior appropriation sufficient. Jerrett v. Mahan, 20 Nev. 89.
18. WATER SUIT—DECREE ENJOINING WRONGFUL DIVERSION. Where the title to water has been obtained by prior appropriation, a decree enjoining one from wrongfully diverting it is not erroneous merely because the party so enjoined owns the land through which the water naturally flows. Ronnow v. Delmuc, 23 Nev. 30.
19. RIGHTS OF APPROPRIATORS, FIRST AND SUBSEQUENT—WASTEFUL USE OF WATER—POWER OF COURT TO REGULATE FUTURE USE. Roeder v. Stein, 23 Nev. 92.
20. RIGHTS OF SUBSEQUENT APPROPRIATORS AS AGAINST SUBSEQUENT APPROPRIATIONS OF FIRST APPROPRIATOR. Lobdell v. Simpson, 2 Nev. 274; Proctor v. Jennings, 6 Nev. 83.
21. APPROPRIATION CONVERSION AT DIFFERENT POINTS. Hobart v. Wicks, 15 Nev. 418.
22. MEASUREMENT OF WATER APPROPRIATED. To be made at point where least water is carried. Ophir S. M. Co. v. Carpenter, 6 Nev. 393.
23. ABANDONMENT OF WATER. Schulz v. Sweeney, 19 Nev. 359.

An Act to provide for the organization and government of irrigation and water storage districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes.

Approved March 23, 1891, 106.

Irrigation District May Be Organized.

374. SECTION 1. Whenever a majority of the taxpayers, as shown by the last assessment roll, owning lands susceptible of irrigation from a common source, and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the provisions of this Act, and when so organized such district shall have the power conferred, or that may hereafter be conferred, by law upon such irrigation district.

Irrigation and Water Storage Districts—Petition to County Commissioners—Election to Be Held in Such Proposed District—Qualified Electors Only Entitled to Vote.

375. SEC. 2. A petition shall first be presented to the Board of County Commissioners of the county in which the lands, or the greater portion thereof, are situated, signed by the required number of freeholders of such proposed district, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this Act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said Board of County Commissioners, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all said costs in case said organization shall not be effected. Such petition shall be presented at a regular meeting of said board, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, in case a newspaper is published in said county, which shall be designated by said board as the paper most likely to impart notice of the

hearing of said petition, and, in case no newspaper is published in said county, then by posting notices of such application in at least three public places within said proposed district, of the date of the hearing of said petition, which said notice shall state the time of the meeting of said board, when said petition will be heard and describe the territory to be embraced in such proposed district. When such petition is presented, the said Board of County Commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all; and on the final hearing may make such changes in the proposed boundaries as they find to be proper, and shall establish and define such boundaries; *provided*, that said board shall not modify said boundaries so as to except from the operation of this Act any territory within the boundaries of the district proposed by said petitioners which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district, nor shall any lands which will not, in the judgment of said board, be benefited by irrigation by said system be included within such district; *provided*, that any person whose lands are susceptible of irrigation from the same source shall, upon application of the owner to said board, be entitled to have such lands included in said district. Said board shall also make an order dividing said district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall be elected from each district. Said Board of County Commissioners shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provisions of this Act. Such notice shall describe the boundaries so established and shall designate the name of such proposed district, and said notice shall be published or posted, as hereinbefore prescribed, at least three weeks prior to such election, and if any portion of such proposed district lie within another county or counties, then said notice shall be published or posted within each of said counties in the manner hereinbefore prescribed. Such notice shall require the electors to cast ballots which shall contain the words: "Irrigation District—Yes," or "Irrigation District—No," or words equivalent thereto, and also the names of persons to be voted for to be members of the Board of Directors. No person shall be entitled to vote at any election to be held under the provisions of this Act unless he shall possess all the qualifications required of electors under the general election laws of this state, and whose name shall have been enrolled upon the registration books within said district at the last general election preceding such election, or whose name shall have been registered upon the books of registration within said district for the general election then next ensuing. *As amended, Stats. 1899, 51.*

Election, How Conducted—Duties County Commissioners—Powers and Duties of Board of Directors.

376. SEC. 3. Such election shall be conducted in accordance with the general election laws of the state; *provided*, that no particular form of ballot shall be required. The said Board of County Commissioners shall meet on the second Monday next succeeding such election, and proceed to canvass the votes cast thereat, and if, upon such canvass, it appear that at least two-thirds of all the votes cast are "Irrigation District—Yes," the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the County Recorder, of each county in which any portion of such lands are situated, and must also immediately forward a copy thereof to the Clerk of the Board of County Commissioners of each of the counties in which any portion of the district may lie; and no Board of County Commissioners of any county including any portions of such district shall, after the date of the organization of such

district, allow another district to be formed including any of the lands in such district, without the consent of the Board of Directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying according to law, and shall hold such offices, respectively, until their successors are elected and qualified. For the purposes of the election above provided for, the said Board of County Commissioners must establish a convenient number of election precincts in said proposed district, and define the boundaries thereof, which said precincts may thereafter be changed by the Board of Directors of such district.

When Elections Shall Be Held—Three Members Board of Directors to Be Elected—Each Member of Board to Give Bond—County Treasurer Ex Officio Treasurer of the District—Assessor Ex Officio Assessor.

377. SEC. 4. An election shall be held in such district on the first Tuesday in April next succeeding its formation, and on the first Tuesday in April in each second year thereafter, at which three members of the Board of Directors for the district shall be elected. The three persons receiving the highest number of votes at such election shall be declared elected. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the Board of Directors, and a copy thereof with the County Recorder of the county wherein the district is situated. Each member of the Board of Directors shall execute an official bond in the sum of twenty-five thousand dollars, which said bond shall be approved by the Judge of the district court for the county wherein said organization was effected, and shall be recorded in the office of the County Recorder of said county. Said bond shall be in the form prescribed by law for the official bonds of county officers. The County Treasurer of the county wherein said organization is effected shall be ex officio Treasurer of the district, and the County Assessor of said county shall be the ex officio Assessor of the district. The ex officio officers herein mentioned shall, in addition to their duties as county officers, perform all the duties which may devolve upon them as ex officio officers of the water districts which may be organized in their respective counties; *provided*, that where a district shall be so situate as to comprise portions of two or more counties, the Assessors of said counties shall make their district assessments as ex officio Assessors of the portions of the said district so situated, and shall turn their district assessment rolls over to the Treasurer of one of these said counties, who shall be designated and selected by a majority of the Board of Directors to act as ex officio Treasurer of said district. *As amended, Stats. 1899, 53.*

Notice of Election—Election Officers.

378. SEC. 5. Fifteen days before any election held under this Act, subsequent to the organization of any district, the Secretary of the Board of Directors shall cause notices to be posted in three public places in each election precinct of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place, to be determined by said board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint, for each precinct, from the electors thereof, one Inspector and two Judges, who shall constitute a Board of Election for such precinct. If the board fail to appoint a Board of Election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The Board of Directors must, in its order appointing the Board of Election, designate the house or place within the precinct where the election must be held.

Clerks, How Appointed—Time to Open Polls.

379. SEC. 6. The Inspector shall be Chairman of the Election Board, and may: First—Administer all oaths required in the progress of an election. Sec-

ond—Appoint Judges and Clerks if, during the progress of an election, any Judges or Clerk ceases to act. Any member of the Board of Election, or any Clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The Board of Election of each precinct must, before opening the polls, appoint two persons to act as Clerks of the election. Before opening the polls, each member of the board and each Clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be open one hour after sunrise on the morning of the election and be kept open until sunset, when the same must be closed. The provisions of the statutes of this State, concerning the form of ballots to be used, shall not apply to elections held under this Act.

Duties Election Officers.

380. SEC. 7. Voting may commence as soon as the polls are open, and may be continued during all the time they remain open, and shall be conducted as nearly as practicable in accordance with the provisions of the general election laws of this state, in force at the time of such election. As soon as the polls are closed the Judges shall open the ballot box and commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the Inspector or one of the Judges, who shall open them and read aloud the names of each person contained therein, and the office for which every such person is voted for. Each Clerk shall write down each office to be filled and the name of each person voted for, for such office, and shall keep the number of votes by tallies as they are read aloud by the Inspector or Judge. The counting of votes shall be continued without adjournment until all have been counted.

Certificates of Election, How Formed—Disposition of Ballots.

381. SEC. 8. As soon as all the votes are read off and counted a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and words at full length; each certificate shall be signed by the Clerk, the Judge, and the Inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the Inspector and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the Inspector, during the counting thereof, in the order in which they are entered on the tally list by the Clerks; and said ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the Inspector in the presence of the Judges and Clerks, and indorsed "Election returns of (naming the precinct) precinct," and be directed to the Secretary of the Board of Directors, and shall be immediately delivered by the Inspector, or by some other safe and responsible carrier designated by said Inspector, to said Secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the Board of Directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted.

Returns, How and When Canvassed.

382. SEC. 9. No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The Board of Directors must meet at its usual place of meeting, on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the Board of Directors must then and there proceed to can-

vass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public, and by opening the returns and ascertaining the vote of the district, for each person voted for, and declaring the result thereof.

Statement of Result to Show—How Vacancies Shall Be Filled.

383. SEC. 10. The Secretary of the Board of Directors must, as soon as the result is declared, enter in the record of said board a statement of such result, which statement must show: First, the whole number of votes cast in the district and in each division of the district; second, the names of the persons voted for; third, the office to fill which each person was voted for; fourth, the number of votes given in each precinct to each of such persons; fifth, the number of votes given in each division for the office of Director. The Board of Directors must declare elected the persons having the highest number of votes given for each office. The Secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of board. In case of a vacancy in the office of Assessor, Collector or Treasurer, the vacancy shall be filled by appointment of the Board of Directors. In case of a vacancy in the office of Director, the vacancy shall be filled by appointment in the Board of County Commissioners of the county where the office of said Board of Directors is situated, from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified. *As amended, Stats. 1899, 53.*

Duties and Powers of Board.

384. SEC. 11. On the first Tuesday in May next following their election, the Board of Directors shall meet and organize as a board, elect a President from their number, and appoint a Secretary. The board shall have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said land, and, generally, to perform all such acts as shall be necessary to fully carry out the purposes of this Act. The said by-laws, rules and regulations must be printed in convenient form for distribution in the district. And it is hereby expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner, upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; *provided*, that any land owner may assign the right to the whole or any portion of the waters so apportioned to him.

Board of Directors to Hold Monthly Meetings—Board May Construct Dams, Reservoirs and Works—All Property to Be a Public Use.

385. SEC. 12. The Board of Directors shall hold a regular monthly meeting in their office on the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business; *provided*, that all special meetings must be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof, by the Secretary, must be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified shall be transacted at such special meeting. All meetings of the board must be public, and two members shall constitute a quorum for the transaction of business, but on all questions requiring a vote there shall be a concurrence of at least two members of said board. All records of the board shall be open to the inspection of any elector during business hours. The board, and its agents and employees, shall have the right to enter

upon any land in the district to make surveys, and may locate the line for any canal or canals, and the necessary branches for the same, on any of said lands which may be deemed best for such location. Said board shall have the right to acquire, either by purchase, condemnation or appropriation, all lands and waters and other property necessary for the construction, use, supply, maintenance, repair and improvement of said canal or canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters and all necessary appurtenances; *provided*, that nothing contained in this section shall authorize any interference with or condemnation of any canal or water right, the right to which has vested prior to the organization of any district under the provisions of this Act. In case of purchase the bonds of the district hereinafter provided for may be used at their par value in payment, and in case of condemnation the board shall proceed in the name of the district, under the provisions of an Act of the Legislature of the State of Nevada entitled "An Act to allow any person or persons to divert the water of any river or stream and run the same through any ditch or flume, and to provide for the right of way through the lands of others," approved March 3, 1866, and all Acts amendatory thereof or supplementary thereto. Said board may also construct the necessary dams, reservoirs and works for the collection of water for said district, and do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner in said district for irrigation or other beneficial purposes. The use of all water required for the irrigation of the lands of any district formed under the provisions of this Act, together with the rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this Act is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law. *As amended, Stats. 1899, 54.*

Board May Hold Property in Trust.

386. SEC. 13. The legal title to all property acquired under the provisions of this Act shall immediately, and by operation of law, vest in such irrigation district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this Act; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided.

Board May Be Party to Suits in Court.

387. SEC. 14. Said board is hereby authorized and empowered to take conveyances and other assurances for all property acquired by it, under the provisions of this Act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper to fully carry out the provisions of this Act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this Act or acquired in pursuance thereof; and in all courts, actions, suits or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district.

Special Election to Determine Issuance of Bonds—Two-Thirds Majority—Bonds, Where Payable, etc.

388. SEC. 15. For the purpose of constructing necessary irrigation canals, reservoirs and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this Act, the Board of Directors of any such district must, as soon as such district has been organized, as may be practicable, estimate and determine the amount of money necessary to be raised, and shall immediately thereupon call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this Act, the question whether or not the bonds of said district shall

be issued in the amount so determined. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county, if any newspaper be published therein, where the office of the Board of Directors of such district is kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued, and said election must be held and the result thereof determined and declared, in all respects, as nearly as practicable in conformity with the provisions of this Act, governing the election of officers; *provided*, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds,—Yes," or "Bonds—No," or words equivalent thereto. If a two-thirds majority votes "Bonds—Yes," the Board of Directors shall immediately cause bonds in said amount to be issued. Said bonds shall be payable in lawful money of the United States, in installments as follows, to wit: At the expiration of eleven years, not less than five per cent of said bonds; at the expiration of twelve years, not less than six per cent; at the expiration of thirteen years not less than seven per cent; at the expiration of fourteen years, not less than eight per cent; at the expiration of fifteen years, not less than nine per cent; at the expiration of sixteen years, not less than ten per cent; at the expiration of seventeen years, not less than eleven per cent; at the expiration of eighteen years, not less than thirteen per cent; at the expiration of nineteen years, not less than fifteen per cent; and for the twentieth year a percentage sufficient to pay off said bonds. The bonds shall bear interest at the rate of six per cent per annum, payable semi-annually on the first day of January and July of each year. The principal and interest shall be payable at the office of the Treasurer of the district. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than five hundred dollars, and shall be negotiable in form, signed by the President and Secretary, and the seal of the Board of Directors shall be affixed thereto. They shall be numbered consecutively as issued, and bear date at the time of their issuance. Coupons for the interest shall be attached to each bond, signed by the Secretary. Said bonds shall express on their face that they were issued by authority of this Act, stating its title and date of approval. The Secretary shall keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. *As amended, Stats. 1899, 54.*

Bonds May Be Sold, How and When.

389. SEC. 16. The board may sell said bonds from time to time in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals, reservoirs and works, the acquisition of said property and rights, and otherwise to fully carry out the object and purposes of this Act. Before making any sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof, at least twenty days, in a daily newspaper published in each of the cities of San Francisco and Salt Lake, and in at least three daily newspapers published in the State of Nevada, to be designated by said board, and in any other newspaper which the said board, in its discretion, may deem advisable. The notice shall state that sealed proposals will be received by the board, at their office, for the purchase of bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest bidder, and may reject all bids; but said board shall, in no event, sell any of the said bonds for less than ninety per cent of the face value thereof. The proceeds of such sales shall constitute a construction fund, for the purpose of carrying out the provisions of this Act.

Bonds, How Paid.

390. SEC. 17. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all real property in the district shall be and remain liable to be assessed for such payment as hereinafter provided.

Property, How Assessed.

391. SEC. 18. The Assessor must, between the first Monday in March and the first Monday in June in each year, assess all real property in the district to the persons who own, claim, have the possession or control thereof, at its full cash value. He must prepare an assessment book, with appropriate headings, in which must be listed all such property within the district, in which must be specified in separate columns, under the appropriate head:

First—The name of the person to whom the property is assessed. If the name is not known to the Assessor, the property shall be assessed to "unknown owners."

Second—Land by township, range, section, or fractional section, and when such land is not a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon.

Third—City and town lots, naming the city or town, and the number and block, according to the system or numbering of such city or town, and the improvements thereon.

Fourth—The cash value of real estate, other than city or town lots.

Fifth—The cash value of improvements on real estate.

Sixth—The cash value of city and town lots.

Seventh—The cash value on [of] improvements on city and town lots.

Eighth—The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

Ninth—The total value of all property assessed.

Tenth—The total value of all property after equalization by the Board of Directors.

Eleventh—Such other things as the Board of Directors may require.

Deputy Assessor, Pay Of.

392. SEC. 19. The Board of Directors may, in their discretion, allow the Assessor a deputy, to be appointed by him, if in the judgment of the board they deem it necessary to complete the assessment within the time herein prescribed. The board shall fix the compensation and the length of time he shall serve, which shall be paid out of the treasury of the district. The compensation shall not exceed four dollars per day for each deputy for the time actually engaged, nor must any allowance be made but for work done between the first Monday in March and the first Monday in August in each year.

Duties of Directors.

393. SEC. 20. On or before the first Monday in August in each year, the Assessor must complete his assessment book and deliver it to the Secretary of the Board, who must immediately give notice thereof, and of the time the Board of Directors, acting as a Board of Equalization, will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district (provided any newspapers are published therein), if not by posting three notices in each election precinct in said district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment book must remain in the office of the Secretary for the inspection of all persons interested.

Directors as a Board of Equalization.

394. SEC. 21. Upon the day specified in the notice required by the preceding section for the meeting, the Board of Directors, which is hereby constituted a

Board of Equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them, and the board may change the valuation as may be just. The Secretary of the Board shall be present during the sessions and note all changes made in the valuation of property, and in the names of the persons whose property is assessed, and within ten days after the close of the session, he shall have the total values, as finally equalized by the board, entered into columns and added.

Bonds, How Provided For—Duty of County Commissioners.

395. SEC. 22. The Board of Directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years after the issuing of bonds by the board, must increase said assessment for the ensuing ten years in the following percentage of the principal of the whole amount of bonds then outstanding, to wit: For the eleventh year, five per cent; for the twelfth year, six per cent; for the thirteenth year, seven per cent; for the fourteenth year, eight per cent; for the fifteenth year, nine per cent; for the sixteenth year, ten per cent; for the seventeenth year, eleven per cent; for the eighteenth year, thirteen per cent; for the nineteenth year, fifteen per cent; and for the twentieth year, a percentage sufficient to pay off such [said] bonds. The Secretary of the Board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment upon the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called the "Bond Fund of _____ Irrigation District." In case of the neglect or refusal of the Board of Directors to cause such assessment and levy to be made as in this Act provided, then the assessment of property made by the County Assessor and County Board of Equalization shall be adopted, and shall be the basis of assessment for the district, and the Board of County Commissioners of the county in which the office of the Board of Directors is situated shall cause an assessment roll for said district to be prepared, and shall make the levy required by this Act, in the same manner and with like effect as if the same had been made by said Board of Directors, and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the Collector or Treasurer of the district to perform the duties imposed by law, then the Tax Collector and Treasurer of the county in which the office of the Board of Directors is situated must, respectively, perform such duties, and shall be accountable therefor upon their official bonds as in other cases.

Assessment a Lien on Real Property.

396. SEC. 23. The assessment upon real property is a lien against the property assessed, from and after the first Monday in March, for any year, and such lien is not removed until the assessments are paid or the property sold for the payment thereof.

Duties of Secretary and Collector.

397. SEC. 24. On or before the first day of November the Secretary must deliver the assessment book to the Collector of the district who shall, within twenty days publish a notice in a newspaper published in each of the counties comprising the district, if there be lands situated in more than one county in such district (if there be any newspaper published therein, and if not, then by posting notices as hereinbefore provided), that said assessments are due and payable and will become delinquent at six o'clock p. m. on the last Monday of December next thereafter; and that unless paid prior thereto ten per cent will be added to the amount thereof, and also the time and place at which payments of assessments may be made. The notice shall also specify a time and place within each election precinct of the district, when and where the Collector will attend to

receive payment of assessments, and shall be published or posted as hereinbefore provided, for at least fifteen days prior to such date in each precinct in said district. The Collector must attend at the time and place specified in the notice to receive assessments, which must be paid in lawful money of the United States. He must mark the date of payment of any assessment in the assessment book opposite the name of the person paying, and give a receipt to such person, specifying the amount of the assessment and the amount paid, with a description of the property assessed. On the last Monday of December, at six o'clock p. m. of said day, all unpaid assessments are delinquent, and thereafter the Collector must collect thereon, for the use of the district, an addition of ten per cent.

Delinquent List to Be Published.

398. SEC. 25. On or before the first day of February, the Collector must publish the delinquent list, which must contain the names of the persons and description of the property delinquent, and the amount of the assessments and costs due opposite each name and description. He must append to and publish with the delinquent list a notice that unless the assessments delinquent, together with the costs and percentage, are paid, the real property, upon which such assessments are a lien, will be sold at public auction. The publication must be made once a week for three successive weeks, in a newspaper published in each of the counties comprised in the district (if any newspaper be published therein, if not, by posting notices in three public places in each election precinct where property is to be sold, one of which notices shall be upon the property which is offered for sale). The publication or posting must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication or posting of the notices, and the place must be at some point designated by the Collector.

Duties of Collector.

399. SEC. 26. The Collector must collect, in addition to the assessments due on the delinquent list and ten per cent added, fifty cents on each lot, piece or tract of land separately assessed, one half of which must go to the district and the other to the Collector for preparing the list. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice, the Collector, between the hours of 10 o'clock a. m. and 3 o'clock p. m., must commence the sale of the property advertised, commencing at the head of the list and continuing alphabetically, or in the numerical order of the lots, or blocks, until completed. He may postpone the day of commencing the sales, or the sale, from day to day, but the sale must be completed within three weeks from the day first fixed.

Property Sold, How and When—Conveyances Made—Price Fixed.

400. SEC. 27. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate, in writing, to the Collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the Collector may designate it, and the person who will take the least quantity of land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including one dollar for the publication of each name and two dollars to the Collector for the duplicate certificate of sale, is the purchaser. If the purchaser does not pay the assessments and costs before ten o'clock a. m. the following day, the property, on the next sale day, must be resold for the assessments and costs. But in case there is no purchaser, in good faith, for the same on the first day that the property is offered for sale, then, when the property is offered thereafter for sale, and there is no purchaser, in good faith for the same, the whole amount of the property assessed shall be struck off to the irrigation district within which such lands are situated as the purchaser, and the duplicate certificate delivered to the Treasurer of the district and filed by him in

his office. No charge shall be made for the duplicate certificate where the district is the purchaser, and, in such case, the Collector shall make an entry, "Sold to the district," and he shall be credited with the amount thereof in his settlement. An irrigation district, as a purchaser at such sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to the right of redemption herein provided, may be conveyed by deed, executed and acknowledged by the President and Secretary of said board; *provided*, that authority to so convey must be conferred by resolution of the board, entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property. After receiving the amount of assessments and costs, the Collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the lands sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the Collector, and one copy delivered to the purchaser and the other filed in the office of the County Recorder of the county in which the land is situated.

Assessment Lien.

401. SEC. 28. The Collector, before delivering any certificate, must in a book enter a description of the land sold, corresponding with the description in the certificate, the date of the sale, purchasers' names, and amounts paid, regularly number [numbered], the description on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection, without fee, during office hours when not in actual use. On filing the certificate with such County Recorder, the lien of the assessments vests in the purchaser, and is only divested by the payment to him, or to the Collector for his use, of the purchase money, and two per cent per month from the day of the sale until redemption.

Redemption, How and When Made.

402. SEC. 29. Redemption of the property sold may be made by the owner, or party in interest, within six months from the day of the purchase. Redemption must be made in lawful money of the United States, and when made to the Collector he must credit the amount paid to the person named in the certificate, and pay it on demand to the person or his assignees. In each report the Collector makes to the Board of Directors he must name the person entitled to redemption money, and the amount due to each. On receiving the certificate of sale the County Recorder must file it and make an entry in a book similar to that required of the Collector. On the presentation of the receipt of the person named in the certificate, or of the Collector for his use, of the total amount of the redemption money, the Recorder must mark the word "Redeemed," the date, and by whom redeemed on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within six months from the date of the sale, the Collector, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by the law for its redemption. The Collector shall receive from the purchaser two dollars for making such deed and pay the same into the treasury for the use of the district.

Deed Shows What—Deed Conveys What.

403. SEC. 30. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is *prima facie* evidence that:

First—The property was assessed as required by law.

Second—That the property was equalized as required by law.

Third—That the assessments were levied in accordance with law.

Fourth—The assessments were not paid.

Fifth—At a proper time and place the property was sold as prescribed by law, and by the proper officer.

Sixth—The property was not redeemed.

Seventh—The person who executed the deed was the proper officer. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the Assessor, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein free of all incumbrances, except when the land is owned by the United States or this state, in which case it is *prima facie* evidence of the right of possession.

Delinquent List Prima Facie Evidence.

404. SEC. 31. The assessment book, or delinquent list, or a copy thereof, certified by the Collector, showing unpaid assessments against any person or property, is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of assessment due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessments have been complied with.

Mistake Not to Affect.

405. SEC. 32. When land is sold for assessments, correctly imposed, as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable.

Collector to Settle.

406. SEC. 33. On the first Monday in each month the Collector must settle with the Secretary of the Board for all moneys collected for assessments, and pay the same over to the Treasurer, and within six days thereafter he must deliver to and file in the office of the Secretary a statement, under oath, showing:

First—An account of all his transactions and receipts since his last settlement.

Second—That all money collected by him, as Collector, has been paid.

The Collector shall file in the office of the Secretary, on said first Monday in each month, the receipt of the Treasurer for the money so paid. The money so collected, together with surplus moneys collected for rents, tolls and from other sources as provided for in section thirty-seven of this Act, shall constitute a bond fund to be used for the payment of the bonds and the interest thereon.

Coupons, How Paid—Bonds, How Paid.

407. SEC. 34. Upon the presentation of the coupons due, to the Treasurer, he shall pay the same from said bond fund. Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars, the Board of Directors may direct the Treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least four weeks in some daily newspaper in each of the cities hereinbefore named, and in any other newspaper which said board may deem advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted; *provided*, that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the Treasurer, under the direction of the board, in United States gold-bearing bonds or the bonds of the state, which shall be kept in said "Bond Fund," and may be used to redeem said district bonds whenever the holders thereof may desire.

Advertising for Work—Contracts Awarded.

408. SEC. 35. After adopting a plan of said canal or canals, storage reservoirs and works, the Board of Directors shall give notice, by publication thereof, not less than twenty days in one newspaper published in each of the counties composing the district, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work, or of any portion thereof. If less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which at the time and place appointed shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and readvertise for proposals, or may proceed to construct the work, under their own superintendence, with the labor of the residents of the districts. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for double the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer, and be approved by the board.

Claims, How Allowed and Paid—Duties of District Officers.

409. SEC. 36. No claim shall be paid by the Treasurer until allowed by the board, and only upon a warrant signed by the President and countersigned by the Secretary; *provided*, that the board may draw from time to time from the construction fund and deposit in the county treasury of the county where the office of the board is situated, any sum in excess of the sum of twenty-five thousand dollars. The County Treasurer of said county is hereby authorized and required to receive and receipt for the same, and place the same to the credit of the said district, and he shall be responsible upon his official bond for the safe keeping and disbursement of the same, as in this Act provided. He shall pay out the same, or any portion thereof, to the Treasurer of the district only, and only upon the order of the board, signed by the President and attested by the Secretary. The County Treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said report shall be verified and filed with the Secretary of the Board of Directors. The District Treasurer shall also report to the board in writing on the first Monday in each month the amount of money in the district treasury, the amount of receipts for the month preceding, and the amount and items of expenditures, and said report shall be verified and filed with the Secretary of the Board.

Expenses, How Paid—How to Raise Funds—Disposition of Surplus.

410. SEC. 37. The costs and expenses of purchasing and acquiring property and constructing the works and improvements herein provided for shall be wholly paid out of the construction fund. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portions of canals, flumes, reservoirs and works as are completed and in use, including salaries of officers and employees, the board may either fix rates of tolls and charges, and collect the same from all persons using water from said canals and works for irrigation and other purposes, or they may provide for the payment of said expenditures by a levy of assessments therefor or by both said tolls and assessments; if by the latter method, such levy shall be made on the completion and equalization of the assessment roll, and the board shall have the same powers and functions for the

purposes of said levy as are now possessed by the Boards of County Commissioners in this state. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this Act relating to the payment of the principal and interest of the bonds herein provided for, and any surplus remaining from the sources as provided for in this section, shall be placed in the bond fund at such times as the Board of Directors may determine.

Works Constructed, Where and How—Right of Way.

411. SEC. 38. The Board of Directors shall have the power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume, which the route of said canal or canals, ditches or flumes may intersect or cross, in such manner as to afford security for life and property, but said board shall restore the same, when so crossed or intersected, to its former state, as near as may be, or in a sufficient manner not to have impaired, unnecessarily, its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid, and if such railroad company and said board, and the owners and controllers of the said property, thing, or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects, as is herein provided, in respect to taking of lands. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the said lands which are now, or may be, the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all the waters and water rights belonging to this state within the district.

Pay of Board—Board to Fix Compensation of Other Officers—Claims, How Made—Question of Salaries to Be Submitted to Electors.

412. SEC. 39. The Board of Directors shall receive three dollars per day each for the time actually and necessarily spent in attending meetings of the board, and actual and necessary expenses paid out while engaged in official business under the order of the board. The board shall fix the compensation to be paid to other officers and employees whose compensation is not herein fixed, which shall be paid out of the district treasury; but no claim for services shall be paid to any officer, employee or other person, under the provisions of this Act, until the same shall be properly and minutely itemized and verified by the oath of the claimant that the services have been by him performed, giving the date of such performance, the time actually spent, and, if other than a member of the Board of Directors, that the service were performed by the order of the Board of Directors, giving the date of such order, and that such claim has not been theretofore presented, and that no portion thereof has been paid. Said claim shall be filed with the Secretary of the Board, and shall be audited and allowed upon the first Monday in each month. In case of the rejection, by the board, of the said claim, either in whole or in part, the same shall not be again presented, but the party feeling aggrieved thereby may pursue such a course as he might pursue under like circumstances if the claim were held against the county. If, at any time, freeholders to the number of fifty or a majority in any district, shall petition said board to submit a schedule of salaries for the officers to be paid under this Act, fixing the amount of said salaries, it shall be the duty of such Board of Directors, at the next election, to submit to the voters of the district such schedule, to be voted for by them in the same manner as other questions are submitted under the provisions hereof. If it shall appear, from the said election returns, that the majority of the electors in said district cast his [their] ballots in favor of such schedule, the same shall be thereafter established as the rate of compensation for the officers in said district.

No Officer to Be Interested in Contract.

413. SEC. 40. No Director or any other officer named in this Act shall in any

manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom, and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and upon conviction thereof, he shall forfeit his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Special Election to Levy Assessments—Rate of Assessment, How Ascertained and Collected.

414. SEC. 41. The Board of Directors may, at any time when in their judgment it may be advisable, call a special election, and submit to the qualified electors of the district the question, whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this Act. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such election the ballots shall contain the words: "Assessment—Yes," or "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall, at the time of the annual levy hereunder, levy an assessment sufficient to raise the amount voted. The rate of assessment shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate assessed value of the property in the district as it appears in the assessment roll for the current year, and then dividing the sum voted by the remainder of such aggregate assessed value. The assessments so levied shall be computed and entered on the assessment roll by the Secretary of the Board, and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid into the district treasury for the purposes specified in the notice of such special election.

No Debt to Be Incurred.

415. SEC. 42. The Board of Directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this Act, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

How Water May Be Distributed.

416. SEC. 43. In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes and susceptible of irrigation therefrom, then it shall be the duty of the Water Commissioners, as hereinafter provided, to apportion in just and equitable proportion a certain amount of said water, upon certain or alternate weekly days, to different localities as they may in their judgment think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all, or in lieu of the division of water by time, may, if they shall deem such a course for the best interests of water claimants, divide the volume of water between different localities in such a manner as in their judgment would best subserve the best interests of the people of the locality or district. Said Water Commissioners shall consist of the Chairman of the Board of Directors of each of the districts affected.

Special Proceeding in Court.

417. SEC. 44. The Board of Directors of an irrigation district organized under the provisions of this Act may commence a special proceeding, in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of bonds of said district, whether said bond, or any of them, have or have not then been sold, may be judicially examined, approved, and confirmed.

Board of Directors May Institute Proceedings.

418. SEC. 45. The Board of Directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some

portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of such bonds, and shall state generally that the irrigation district was duly organized, and that the first Board of Directors was duly elected; but the petition need not state the facts showing such organization of the district or the election of such first Board of Directors.

Duties of Clerk of Court—Interested Parties May Answer, How.

419. SEC. 46. The court shall fix the time for the hearing of said petition, and shall order the Clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time that the notice of a special election, provided for by this Act, to determine whether the bonds of said district shall be issued, is required to be given and published. The notice shall state the time and place fixed for hearing of the petition and the prayer of the petition, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the Board of Directors of ----- Irrigation District (giving its name), praying that the proceedings for the issue and sale of the bonds of said district may be examined, approved and confirmed by said court.

Civil Practice Act Applicable—Motion for New Trial.

420. SEC. 47. Any person interested in said district, or in the issue or sale of said bonds, may demur to or answer said petition. The provisions of the Civil Practice Act of this state respecting the demurrer and the answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The persons so demurring to or answering said petition shall be the defendants to said special proceeding and the Board of Directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for [the] purpose of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements contained therein. The rules of pleading and practice provided by the Civil Practice Act which are not inconsistent with the provisions of this Act are applicable to the special proceeding herein provided for. A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issue to be reexamined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial.

Powers of the Court—Costs, How Taxed.

421. SEC. 48. Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of this Act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bond, and the order for the sale and the sale thereof. The court, in inquiry [inquiring] into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings in part, and disprove [disapprove] and declare illegal or invalid other and subsequent parts of the proceedings. The courts shall find and determine whether the notice of the filing of said petition has been duly given and published for the time and in the manner in this Act prescribed. The costs of the special proceedings may be allowed and apportioned between all of the parties, in the discretion of the court.

Appeal, When Taken.

422. SEC. 49. An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within ten days after the entry of said order or said judgment.

Not to Repeal Acts or Modify Rights.

423. SEC. 50. None of the provisions of this Act shall be construed as repealing or in anywise modifying the provisions of any other Act relating to the subject of irrigation or Water Commissioners. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, except that the surplus flood waters of any stream or streams may be stored and used under the provisions of this Act.

An Act to provide for turning water stored for irrigation or other beneficial purposes into the channel of any stream and for reclaiming the same.

Approved March 9, 1899, 64.

Water Stored for Irrigation May Be Reclaimed.

424. SECTION 1. Any water stored for irrigation or other beneficial purposes may be turned into the channel of any natural stream or water course, and mingled with its waters, and then be reclaimed, but, in reclaiming it, water already appropriated by others shall not be diminished in quantity.

An Act to allow any person or persons to divert the waters of any river or stream, and run the same through any ditch or flume, and to provide for the right of way through the lands of others.

Approved March 3, 1866, 202.

Manner of Constructing and Maintaining a Ditch or Flume.

425. SECTION 1. Any person or persons desiring to construct and maintain a ditch or flume, within any one or more of the counties of this state, shall make, sign, and acknowledge, before some officer entitled to take acknowledgments of deeds, a certificate, specifying: First, the name by which the ditch or flume shall be known; and, second, the names of the places which shall constitute the termini of said ditch or flume. Such certificate shall be accompanied with a plat of the proposed ditch or flume, and shall be recorded in the office of the County Recorder of the county or counties within or through which such ditch or flume is proposed to be located; and the record of such certificate and plat shall give constructive notice to all persons of the matters therein contained. The work of constructing such ditch or flume shall be commenced within thirty days of the time of making the certificate above mentioned, and shall be continued with all reasonable dispatch until completed.

Right Conferred to Enter and Appropriate Private Lands—Compensation, How Made—Duty of Appraisers—Appeal.

426. SEC. 2. Any person or persons proposing to construct a ditch or flume, under the provisions of this Act, shall have the right to enter upon private lands for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of said ditch or flume, may be appropriated by said person or persons, after making compensation therefor, as follows: Said person or persons shall select one appraiser, and said owner or

owners shall select one, and the two so selected shall select a third. In case the owner or owners shall from any cause fail, for the period of five days, to select an appraiser, as hereinbefore provided, then it shall be the duty of the appraiser selected by the person or persons proposing to construct said ditch or flume to select a second appraiser, and the two so selected shall select a third; and in either case the three selected shall, within five days after their selection, meet and appraise the lands sought to be appropriated, after having been first duly sworn by some officer entitled to administer oaths, to make a true appraisal thereof, according to the best of their knowledge and ability. If such person or persons shall tender to such owner or owners the appraised value of such land, they shall be entitled to proceed in the construction of the ditch or flume over the lands so appraised, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons; *and, provided further*, that an appeal may be taken by either party from the findings of the appraisers to the district court of the district within which the lands so appraised shall be situated, at any time within ten days after such appraisal. *As amended March 5, Stats. 1869, 129.*

For condemnation of land, see Secs. 3918-3930.

SECTION CONSTRUED. *Barnes v. Sabron*, 10 Nev. 217.

Undisturbed Right of Flowing Water.

427. SEC. 3. The person or persons constructing or maintaining a ditch or flume, under the provisions of this Act, shall have the undisturbed right and privilege of flowing water through the same, to the full extent of its capacity, for mining, milling, manufacturing, agricultural and other domestic purposes, and to use the same at any necessary and convenient point or points along the line thereof; *provided*, that nothing in this Act contained shall be so construed as to interfere with any prior or existing claim or right. *As amended, Stats. 1889, 96.*

Act to Apply to Ditches and Flumes Already Constructed.

428. SEC. 4. This Act shall apply, and the rights and privileges herein conferred shall inure, to the benefit of all persons or corporations who have heretofore constructed, and now maintain, ditches, flumes, or aqueducts in this state, from whatever source they may have procured water, such persons or corporations being required to make and file the certificate mentioned in section one of this Act, and upon such filing, the party or parties filing the same shall be authorized, from time to time, to extend his or their ditch or flume, and proceed to condemn private property for such ditch or flume, or for any reservoir or reservoirs connected, or to be used in connection, with such ditch or flume, as provided in section two of this Act.

LOCATION OF DITCH AND WATER RIGHT FOR MILL SITE—SUFFICIENCY OF APPROPRIATION AND POSSESSION. *Robinson v. Imperial S. M. Co.*, 5 Nev. 44.

An Act to provide for any person or persons owning or controlling any ditches, diverting the waters of any river or stream in and on to lands for the purpose of irrigation; to construct and maintain waste ditches and flumes, and to provide the right of way through the lands of others.

Approved February 26, 1887, 83.

Right to Enter Private Lands.

429. SECTION 1. Any person or persons who have constructed, or who may construct any ditch or flume for the purpose of diverting the water of any river or stream in and on to their lands for the purpose of irrigating and cultivating the same, or who owns or controls or may own and control any such ditch or flume; and who have no natural or artificial ditch or way for conveying off any or all surplus water from such lands, shall have the right to enter upon private lands for the purpose of examining and surveying the same for the purpose of

constructing and maintaining a waste ditch and the necessary flumes connected therewith, and when such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of the said waste ditch and flumes may be appropriated therefor in the same manner as is provided for the appropriation of lands of others in an Act to amend an Act entitled "An Act to allow any person or persons to divert the waters of any river or stream, and run the same through any ditch or flume, and to provide for the right of way through the lands of others," approved March 3, 1866; approved March 5, 1869.

See Section 425.

An Act defining and prohibiting the unlawful diversion and waste of water.

Approved February 28, 1889, 51.

Unlawful Diversion of Water.

430. SECTION 1. Any person or persons who shall, during the irrigating season, divert and conduct the water, or portion thereof, of any river, creek or stream into any slough or sloughs, dam or dams, pond or ponds, and retain, or cause the same to be held or retained therein without making any other use of such water, or who shall, during the irrigating season, divert and conduct the water, or portion thereof, away from any such river, creek or stream, and run, or cause or allow the same to run to waste on sagebrush or greasewood land, such diversion shall be deemed an unlawful use and waste of water.

Penalty.

431. SEC. 2. Any person or persons, company, corporation or association who shall, during the irrigating season, divert and conduct, or any person or persons aiding, abetting or assisting any such person or persons, company, corporation or association in diverting and conducting, during the irrigating season, the water, or portion thereof, of any river, creek or stream into any slough or sloughs, dam or dams, or pond or ponds, and retain, or cause the same to be retained therein without making any other use of such water, or who shall, during the irrigating season, divert and conduct the water, or portion thereof, away from any river, creek or stream, and run, or cause or allow the same to run to waste, contrary to and in violation of the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction in this state, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail of the county not exceeding six months, or by both such fine and imprisonment.

An Act for the protection of agricultural lands.

Approved December 19, 1862, 107.

Obstruction of Streams.

432. SECTION 1. It shall be and is hereby declared unlawful for any person or persons being the owner or owners of or being in possession of any sawmill, or mills used for the making of lumber, or the owner or owners of any slaughter house, brewery, or tannery, to injure or obstruct the natural flow of water in any river, creek, or other stream, or to permit any sawdust, chips, shavings, slabs, offal, refuse, tanbark, or other offensive matter, to enter therein, so as to damage or corrupt the purity of the water of such stream or streams.

Action for Damages.

433. SEC. 2. Any city or county government, or any person or persons, being the owner or owners of or in the possession of any agricultural lands, who may be injured by reason of the violation on the part of any person or persons of the

provisions contained in the preceding section, shall have the right to commence and maintain an action against such person or persons for any damage sustained, in such manner as may be provided by law.

Penalty.

434. SEC. 3. Any person who shall wilfully and knowingly violate the provisions of this Act, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding five hundred dollars.

ROADS AND BRIDGES.

An Act in relation to erection and maintenance of bridges.

Approved February 21, 1877, 81.

Maintenance of Bridges, etc.

435. SECTION 1. All public bridges, not otherwise specially provided for, are maintained by the road district in which they are situated, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the Road Overseers and Board of County Commissioners; the expense of constructing, maintaining, and repairing the same being primarily payable out of [the] road fund of the district or districts in the hands of the County Treasurer.

May Be Maintained from the General Fund or from Special Tax.

436. SEC. 2. Whenever it appears to the Board of County Commissioners that any road district is or would be unreasonably burdened by the expense of constructing or maintenance and repair of any bridge, they may, in their discretion, cause all or a portion of the aggregate cost or expense to be paid out of the general county fund, or a portion out of that fund, or out of any other fund in the county, except school and judges' salary, in which there is a surplus uncalled for; or, they may levy a tax therefor, not to exceed one-fourth of one per cent on the taxable property of the county, annually, till the amount appropriated is raised and paid.

County Commissioners to Supervise.

437. SEC. 3. No bridge, the cost of the construction or repair of which will exceed the sum of one hundred dollars, must be constructed or repaired except on an order of the Board of County Commissioners. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the Board of County Commissioners, by publication at least two weeks in a county newspaper, and if none, then by three posted notices—one at the court house, one at the point to be bridged, and one at some other neighboring public place. The bids to be sealed, opened, and contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into to the approval of the Board of County Commissioners.

Freeholders May Petition—Advertisement.

438. SEC. 4. When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more freeholders of the road district interested therein, may petition the Board of County Commissioners for the erection of such needed bridge; the board must thereupon advertise such application, giving the location and other facts, for two weeks, in a newspaper printed in the county; if none, then by posters, one at the proposed location, one at the court house, and one at some other public place in the county, and notify the Overseer to attend at a certain time and place to hear the application.

Board to Examine Witnesses, etc.

439. SEC. 5. On the day fixed to hear the application, proof of the notice given being made satisfactory, the board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for. If found to be so, the board must determine the character of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide the payment therefor as herein provided.

An Act to provide for the erection of guide-boards on public roads and highways.

Approved February 21, 1879, 44.

Guide-Boards—Style of Board.

440. SECTION 1. It is hereby made the duty of the Board of County Commissioners in each county of this state, within ninety days after the passage of this Act, to cause to be put up, and to be thereafter kept up, at each crossing or forks of any public roads, or highways in such county, and at each place where a public road or highway crosses or diverges from any private or toll road, a guide-board, having thereon an index or pointer, and the words "to (naming the place or first point of any importance on such road, and the number of miles, as near as may be, thereto) miles." Such number of guide-boards shall be put up and so placed at all such points as to enable travelers to readily understand therefrom the road they may wish to travel, in order to arrive at the desired destination.

Owners of Toll Roads to Erect Posts.

441. SEC. 2. The owner or owners of any toll road in this state, having one or more lateral branches, are hereby required, at their own expense, to comply with the provisions of section one of this Act.

Misdemeanor to Deface Guide-Board.

442. SEC. 3. Any County Commissioner or County Commissioners or any owner or owners of such toll road or roads who shall willfully neglect to carry out the provisions of this Act before the 1st day of June, 1895, and every person or persons, who shall willfully tear down, dig up, or in any manner deface, destroy or carry away any such guide-board as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment. *As amended, Stats. 1895, 40.*

An Act to provide for the better preservation of public roads and highways.

Approved March 5, 1885, 65.

Persons Conducting Water Across Highways to Construct and Maintain Bridges and Culverts.

443. SECTION 1. All persons conducting water across any public road or highway, or across any street or alley in any unincorporated town in this state, for domestic, mining, agricultural or manufacturing purposes, are hereby required to construct and maintain, at their own expense, good and substantial culverts or bridges, as the case may be, over such crossings, and shall in no case allow any stream of water, diverted from its natural channel for such purposes by them, to flood or wash any public road or any street or alley in any unincorporated town of this state.

Notice to Be Given Commissioners to Have Work Done.

444. SEC. 2. It is hereby made the duty of the Road Supervisor, in each and every road district of this state, and in case there be no regularly elected and qualified Road Supervisor, then it is hereby made the duty of the Chairman of

the Board of County Commissioners, to at once notify the party or parties violating the provisions of this Act to make such construction or repair as may be necessary, and if such persons shall refuse or neglect to make the same for a period of five days, then it shall be the duty of the Road Supervisor, or in case of his absence, the Chairman of the Board of County Commissioners, to immediately cause the necessary construction or repairs to be made, and to submit in duplicate to the Board of County Commissioners and to the District Attorney, itemized bills of the expense so incurred, which shall be allowed and paid as other bills against the road fund of the district in which said construction or repairs were made, and in case there be no moneys in the said fund, then out of any moneys in the general county fund not otherwise appropriated.

Office of Road Supervisor abolished, Sec. 481.

Duties of District Attorney.

445. SEC. 3. It shall be the duty of the District Attorney receiving such bill of expense, as provided in section two of this Act, to immediately commence an action in any court of competent jurisdiction, for the recovery of such an amount as set forth in the itemized bill of expense aforesaid, together with costs of suit.

Disposal of Moneys Collected.

446. SEC. 4. All moneys so collected, after paying costs of suit, shall be returned and paid into the fund from which the original bill of expense named in section two of this Act shall have been allowed and paid by the Board of County Commissioners.

An Act in relation to public highways.

Approved March 9, 1866, 252.

Highways, What Are.

447. SECTION 1. All public roads, and the streets and alleys in incorporated cities and towns in this state, now used or lawfully entitled to be used as such, and all such roads, streets, and alleys as the Board of Commissioners of the county in which they are situate shall hereafter lawfully cause to be opened, are hereby declared to be public highways; *provided*, that nothing in this Act shall be deemed or construed to injure or abridge the rights of any toll road; but all roads shall be entitled to all the protection and benefits arising from this Act. *As amended, Stats. 1867, 72.*

When Work to Be Done by Contract.

448. SEC. 2. All work hereafter done upon highways, streets or alleys, whether in opening, improving, or keeping the same in repair, shall, when the probable cost of such contemplated work shall exceed one hundred dollars, be done by contracts let to the lowest responsible bidder, and public notice of at least five days shall be given, describing the work to be done, the time and place that bids will be received, and the means of paying for such work. Such bids shall be sealed, may all be rejected, and if any are accepted it shall be that of the lowest bidder who is responsible, or will give satisfactory security. In all cases of emergency, it shall be discretionary with the Board of Commissioners to let contracts for repairs without giving the five days' notice as is contemplated in this section.

Road Fund Created.

449. SEC. 3. To provide funds for paying the expenses of such work, the Board of Commissioners, at the time of levying other state and county taxes, may levy a tax not exceeding one-fourth of one per cent upon the taxable property of their county, to be assessed, collected, and paid in the same manner that state and county tax is collected; and all moneys so collected shall be paid into a fund to be called the road fund.

Disbursing.

450. SEC. 4. In disbursing the moneys of such road fund, the Board of Commissioners shall regard the interests of each road district, distributing upon the highways most beneficial to each road district the proportion of tax by it paid.

Duties of County Commissioners as to Opening Roads—Number of Viewers to Be Appointed.

451. SEC. 5. If twenty-four freeholders in any township of any county containing one hundred or more legal voters, or twelve freeholders of any county containing less than one hundred legal voters, shall petition the Board of County Commissioners of such county for the location, opening to the public use, reestablishment, change or vacation of any road or highway to connect with any highway heretofore established, or any street or alley in any unincorporated town in such county, setting forth in such petition the beginning, course and termination of such road, highway, street or alley proposed to be located, open to public use, reestablished, changed or vacated, together with the names of the owners or occupants of the land through which the same may pass; the Auditor of such county shall lay such petition before the Board of County Commissioners at their next session thereafter and thereupon such Board of County Commissioners may, within twenty days thereafter, proceed to locate, open to public use, reestablish, change or vacate such road, highway, street or alley; *provided*, that any public highway laid out or opened under the provisions of this Act shall be at least four rods wide. Before opening any new road, street or alley through any property, it shall be condemned to public use as follows: The Board of County Commissioners shall appoint two disinterested persons to view, lay out and locate such new road, street or alley, and such two persons in conjunction with two others, chosen by any owner or occupant, or by the several owners or occupants of the property to be traversed by such road, street or alley, shall ascertain the damage done to any property so traversed, after deducting any advantage arising from such road, street or alley, to the owner or occupant of such property. If such four persons cannot agree as to such damages, then they shall choose a fifth, and the decision of a majority of them shall govern, and be reported to the Board of County Commissioners. If the owner or owners or occupants of any property so condemned shall not acquiesce in the amount of damages so reported, an examination may be had before the board and witnesses be examined for the state and such owner or owners or occupants, and the decision of the board shall be final, unless such owner or owners or occupants appeal from the decision of the board within thirty days after such decision to the district court, which he or they may do in the same manner that appeals are taken from justices' courts to the district court. Upon finally determining such damages, the board shall provide for the payment of such damages, either by the person interested in such road, street or alley, or pay the same out of the county treasury as other claims are paid, and after such payment is made the board shall then cause such road, street or alley to be opened. *As amended, Stats. 1887, 56; 1895, 75.*

For condemnation of property, see Secs. 3918-3930.

Fine for Obstructions.

452. SEC. 6. Any person or persons who shall, in any manner, obstruct any road, street, or alley, or, in any manner, injure the same, or prevent travel thereon, or who shall obstruct, dam, or divert any stream or water so as to throw the same, or cause the flowage thereof, upon, across, or along the pathway of any road, highway, street, or alley, shall, upon conviction thereof, be fined in any sum not less than twenty, nor more than five hundred dollars, and the court before which such conviction shall be had, shall order the Sheriff, or any Constable, of the county, to abate, as a nuisance, any fence or other obstruction, to the free and convenient use and travel of such road, street, or alley, or any obstruction from such stream, so as to allow the same to flow in its natural bed.

An Act to provide for constructing and maintaining toll roads and bridges in the State of Nevada.

Approved March 8, 1865, 254.

Toll Roads.

453. SECTION 1. Any person or persons desiring to construct and maintain a toll road within any one or more of the counties of this state, shall make, sign and acknowledge, before some officer entitled to take acknowledgments of deeds, a certificate specifying, first, the name by which the road shall be known; and, second, the names of the places which shall constitute the termini of said road. Such certificate shall be accompanied with a plat of the route of the proposed road, and shall be recorded in the office of the County Recorder of the county or counties within or through which such road is proposed to be located; and the record of such certificate and plat shall give constructive notice to all persons of the matters therein contained. The work of constructing such road shall be commenced within thirty days of the time of making the certificate above mentioned, and shall be continued with all reasonable dispatch until completed.

Right to Construct, etc.—Proviso.

454. SEC. 2. On complying with the provisions of the preceding section, said person or persons shall have the right to construct, complete, and maintain a toll road over the route and between the termini mentioned in such certificate, and establish and collect such rates of toll thereon as he or they may deem proper for the term of ten years; *provided*, that after the expiration of five years from the time of the commencement of taking tolls on any such road, the county or counties in which it is located shall have the right to purchase any such road, at an appraised value, to be determined by five appraisers, to be selected as follows: Two by the owner or owners, two by the County Commissioners of any county in which said road is located wishing to purchase the same, and one by the four appraisers hereinbefore provided for, and their valuation shall be deemed the true value of the road. The rates of toll so established shall be written, painted, or printed in a plain and legible manner, on a bulletin board, to be posted at each toll gate on such road; and if any person who shall construct any toll road under the provisions of this Act, or who shall own any interest in any road so constructed, shall demand or collect any higher or greater rates of toll than those specified on said bulletin board, he shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall, for each offense, be punished by a fine in any sum not exceeding one hundred dollars, and in default of payment of such fine may, in the discretion of the court, be committed to the county jail until such fine be paid. One-half of all fines so collected shall go to the informer or prosecutor, and one-half to the school fund of the county; but in no case shall the county be responsible for the costs in any such prosecution.

May Enter Upon Lands Necessary for the Construction of Roads, etc.—Appraiser—Tender of Appraised Value—Appeal.

455. SEC. 3. Any person or persons proposing to construct a toll road under the provisions of this Act, shall have the right to enter upon private lands for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of said road may be appropriated by said person or persons, after making compensation therefor, as follows: Said person or persons shall select one appraiser, and said owner or owners shall select one, and the two so selected shall select a third, who shall appraise the lands sought to be appropriated, after having been first sworn before some officer entitled to administer oaths to make a true appraisement thereof, according to the best of their knowledge and ability. If such person or persons shall tender to such owner or owners the appraised value of such lands, they shall be entitled

to proceed in the construction of the road over the lands so appraised, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons; *and, provided further*, that an appeal may be taken by either party from the finding of the appraisers, to the district court of the district within which the land so appraised shall be situated, at any time within three months after such appraisement.

For condemnation of property, see Secs. 3918-3930.

Failure to Keep Road in Repair to Work Forfeiture—Quo Warranto.

456. SEC. 4. The owner or owners of any toll road constructed or maintained under the provisions of this Act, shall at all times keep the same in as good condition and repair as may be practicable; and if such owner or owners shall fail to keep the same in such condition and repair, such failure shall work a forfeiture of all rights, privileges, and franchises, belonging to such owner or owners, or any person having any interest therein. Such franchise may be also declared forfeited on information in the nature of a quo warranto, in the manner provided by law; and the owner or owners of any road on which tolls are collected under the provisions of this Act, shall be liable for all the damages sustained by parties passing over such road, in consequence of the carelessness or negligence of the owner or owners in keeping their road in proper repair.

Running Toll Gate, etc., Made a Misdemeanor—Punishment—Fines Under Act, How Disposed of—Costs, etc.

457. SEC. 5. If any person, liable to pay toll therefor, traveling upon any toll road within this state, shall run by, or go around, or attempt to run by any toll gate lawfully established on such road, without first paying or tendering the amount of toll demanded therefor by the proprietor thereof, with the intent to avoid the payment of such toll, he shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall, for each offense, be punished by fine in any sum not exceeding fifty dollars, or imprisonment in the county jail not exceeding five days, or both, at the discretion of the court. All fines collected under the provisions of this section of this Act shall be paid into the treasury of the county wherein such conviction shall have been had, for the benefit of the school fund; but in no case shall the county be responsible for the costs of any prosecution under this section. *As amended, Stats. 1875, 156.*

Quarterly Report of Gross Receipts and Expenditures.

458. SEC. 6. The owner or owners of any toll road, constructed under the provisions of this Act, shall keep, or cause to be kept, an accurate account of the gross receipts and expenditures of such road, and make a quarterly report thereof, under oath to the State Controller, accompanied by the receipt of the County Treasurer of the county in which such road is located, for two per cent of the gross proceeds of such roads, which shall be paid by said County Treasurer as other moneys into the state treasury, and credited to the general school fund; *provided*, that if, in three years after the completion of any road, the net proceeds shall exceed fifty per cent per annum on the cost of construction, then all such excess of fifty per cent shall be paid in the general state school fund, in the same manner as provided in this section for the payment of the two per cent on the gross proceeds, which shall, with the two per cent, be paid in the same kind of money or currency as that collected for tolls.

County to Own Toll Roads on Expiration of Charters—Proviso.

459. SEC. 7. Upon the expiration of forfeiture of any toll road franchise granted under the provisions of this Act, and in case of the expiration or forfeiture of any toll road franchise granted under the provisions of any other Act, whether the same shall have already happened or may hereafter happen, the ownership of said road, with all the rights and privileges theretofore belonging to the same, shall vest in the county or counties in which said road shall be located;

and whenever the same shall have happened, or may hereafter happen, the County Commissioners of the proper county may declare so much thereof as is within their county a free highway; *provided*, that in all cases falling within this section, the County Commissioners of the proper county may give a lease at a nominal rental of any such road whereon tolls are now collected, either under the provisions of any Act of the legislature of this state, or by and with the consent of the County Commissioners aforesaid, to the proprietors, their successors or assignees, of such road, for a term of not to exceed five years, giving to such lessee the right to collect tolls on such road, subject, however, to all the provisions of this Act; and upon the expiration or forfeiture of any such lease, and whenever and as often as the time shall happen, the County Commissioners of the proper county, if they deem it expedient, may give a new lease of such road upon the like terms and conditions, for a further period of not to exceed five years, to the original or any other lessee, unless said road passes through two or more counties, in which case the original lessee, or his assigns, shall have preference. *As amended, Stats. 1875, 156; 1877, 74.*

How Rates of Toll May Be Reduced—Counties May Purchase Road, etc.

460. SEC. 8. Whenever any ten taxpayers in any county through which a road is located and constructed under the provisions of this law, are convinced that tolls charged on said road are unreasonably high, they shall have the right to petition to the Board of County Commissioners to have said rate reduced, which petition shall be accompanied by an affidavit, setting forth wherein said rates of toll should be reduced, and thereupon the County Commissioners shall immediately notify the owners of the road so complained of, who shall select three men to act with three County Commissioners and the six shall select a seventh man, and the seven so selected shall have power to fix the rates of toll to be charged on any road thus complained of, which rates shall not be reduced for a period of five years thereafter, unless at the option of the owners thereof. At the expiration of five years, as mentioned in section two, the county or counties through which said road or roads are located shall have the right to purchase the same; the price and mode of payment to be fixed by a board of referees, composed of the same number and selected in the same manner as mentioned in section two of this Act; *provided, however*, that should no complaint be made of too high rates of toll, the said county or counties shall have the right of purchase, as aforesaid, five years from the date of the completion thereof.

Franchise May Be Located Under this Act.

461. SEC. 9. All franchises granted for toll roads by the first legislature of this state may be located under the provisions of this Act.

Toll Bridges.

462. SEC. 10. Toll bridges may be established and maintained, subject to all the provisions of this Act.

Right of Way.

463. SEC. 11. Nothing in this Act shall be so construed as to give a right of way to exceed in width forty-five feet.

Not to Interfere With Road Now in Use.

464. SEC. 12. No toll road constructed under the provisions of this Act, nor otherwise, shall interfere with any road or highway, now in general use by the traveling public, or the emigration from the east.

An Act to compel the owners of toll roads within this state to keep the same in repair.

Approved March 9, 1865, 271.

When Right to Maintain Deemed Forfeited.

465. SECTION 1. If, after the passage of this Act, any toll road in this state

shall not at all times of the year be kept in good condition and repair, without break or interval between the points of beginning and terminus, by the owner or owners of the same, such owner or owners shall be deemed to have forfeited his or their right to maintain such road, and all the rights, privileges, and franchises belonging or in anywise appertaining to the same. The question as to whether a forfeiture has accrued under the provisions of this Act, shall be determined in the manner provided in an Act entitled "An Act regulating proceedings upon quo warranto and informations in the nature thereof," approved February twenty-first, one thousand eight hundred and sixty-five.

See Sec. 3783, et seq.

An Act relating to toll roads and bridges in Nevada Territory.

Approved February 18, 1864, 71.

Toll Keepers Not to Charge the Military.

466. SECTION 1. Hereafter no toll-gate or toll-bridge keeper or proprietor, or other person, shall be permitted to charge or collect any toll from any soldier, teamster, or other person in the military service of the United States Government.

Penalty.

467. SEC. 2. Any person charging or collecting, or attempting to charge or collect, any toll from any of the persons named in this Act, shall be deemed guilty of a misdemeanor, and may, on conviction thereof, before any Justice of the Peace, be fined in any sum not less than fifty nor more than one hundred dollars.

An Act to create the office of Road Inspector, to provide for work on public roads and to limit the compensation therefor.

Approved February 27, 1897, 25.

Duties of Road Inspector.

468. SECTION 1. The office of Road Inspector is hereby created. The duties of the office shall be to order, superintend, inspect and approve, if properly done, all work upon the public roads in the road district for which he may be appointed, as well as that to be done by Supervisors, if any there be, as that done by other persons; to report thereon to the Board of County Commissioners, and to approve all proper bills for road work before they are presented to said board for allowance.

Board of County Commissioners May Appoint.

469. SEC. 2. The Board of County Commissioners in each county may appoint one Road Inspector for each road district now existing or which may hereafter be created in any county of this state, to hold office at the will of said board.

Relative to Compensation.

470. SEC. 3. The office of Road Inspector shall be without compensation, and no money shall be paid from public funds to defray any expenses incurred therein, or thereby, unless by order of the Board of Commissioners there shall be especially prescribed a limit of compensation for said office in each road district, which order shall especially name the road district wherein said compensation may be given; and no Road Inspector shall receive any compensation as such officer, unless such compensation shall have been fixed by the Board of Commissioners within the limit aforesaid, in and for such road district, previously to his appointment as such Road Inspector.

Paid from Road Fund.

471. SEC. 4. When a compensation is given it shall be paid to the Road Inspector from the road fund of the district in and for which any services by him are performed.

Compensation Fixed by Board of County Commissioners.

472. SEC. 5. Such compensation shall be a daily wage and shall not exceed the limit especially prescribed by law for that county; and shall be fixed by the Board of County Commissioners before the appointment of the Road Inspector or Inspectors who are to receive it. The compensation so fixed shall be in full for all services and expenses of all kinds of said Road Inspector or Inspectors.

Compensation of Road Laborers and Teams.

473. SEC. 6. Compensation to others than the Road Inspector shall be: Not to exceed three dollars for a day's work on the public roads by one man, or not to exceed four dollars, by one man and span of two draft animals, and one dollar additional for each such additional span. The person so compensated shall, without additional charge, furnish such tools, implements, vehicle, etc., as may be necessary in his work.

Day's Work.

474. SEC. 7. A day's work on the public roads shall consist of at least eight hours actual labor, exclusive of the time spent in going to and returning from the work, and in no case shall pay be given for more than one day's time between sunrise and sunset of the same day, to or for the same person.

Elko County Rate.

475. SEC. 8. The rate of compensation for Road Inspector for the county of Elko shall not exceed the sum of two dollars per day for each day actually, necessarily, and economically employed.

An Act entitled an Act in relation to public highways.

Approved March 15, 1875, 159.

Road Districts, How Created—District to Remain Until Disorganized.

476. SECTION 1. Whenever a majority of the taxpayers of any township or townships in any county of this state, whose names shall appear on the last previous assessment roll, shall petition the Board of County Commissioners of such county to divide such township or townships into a road district, or road districts, it shall be the duty of said County Commissioners to so divide such township or townships, and to create such road district or districts (fixing the boundaries thereof and having the same recorded). * * * When such road district or districts shall once be created they shall remain the same, and have the rights and be subject to the duties herein given and imposed, until a majority of the taxpayers of such district shall petition the Board of County Commissioners of the county to disorganize the same, when it shall be the duty of such board to disorganize said district. *As amended, Stats. 1877, 141.*

Transfer of Moneys from Road Fund to School Fund, When to Be Made.

477. SEC. 5. All moneys remaining in the road fund belonging to any road district at the end of every year, or belonging to any district that may disorganize, as provided by this Act, may, on petition of a majority of the taxpayers therein, be applied by the County Commissioners to the building of any bridge or special improvement of any highway in said district, or the county in which said district is situated, or upon such petition said moneys may be transferred to the school fund, and applied to the public school or schools of said district.

Road Fund, How Created and Maintained—Tax May Be Levied—Tax May Be Worked Out.

478. SEC. 8. To create a road fund for the district[s] hereby authorized to be created, the said County Commissioners are required to set off to said fund the net proceeds of the county's proportion of all poll taxes collected from citizens residing in such road district; also, when they deem it expedient, they may levy a property tax not to exceed one-fourth of one per cent on all the property of the county, annually, to be levied, assessed, and collected as other taxes, and assigned by them to the funds of the several road districts, as they may deem for the best interest of the county; also, when a majority of the property holders of any road district shall petition to the County Commissioners in favor of an additional special tax for the benefit of such district, the Commissioners shall levy a tax on all property within such district, at a rate not to exceed three dollars upon each one thousand dollars valuation, which tax shall be collected by the Road Supervisors, as hereinafter provided, and paid into the treasury for the road fund of such district; *provided*, that any person owing the last named property tax, may pay a part or all of the same by labor on the roads of the district, under the direction of the Supervisor thereof, at the rate of three dollars for each full day's work and implements of labor, four dollars per day for each team of two animals, and one dollar per day for each additional animal. *As amended, Stats. 1877, 142.*

Petition to Open Roads—Board of Commissioners and Owners May Select Viewers—Parties Aggrieved May Commence Action.

479. SEC. 10. At any time when a majority of the resident taxpayers of a road district, according to the last previous assessment roll, shall petition the County Commissioners of their counties, for the location, opening for public use, establishment, change or vacation of any public road or highway, or road to connect with any highway heretofore established, any street or alley in any unincorporated town in such county, setting forth in such petition the beginning, course and termination of such road, or highway, street or alley proposed to be located and opened for public use, established, changed or vacated, together with the names of the owner or owners of the land through which the same will pass, said petition may be presented to the County Clerk of said county, and the Clerk shall lay said petition before the Board of County Commissioners, at their next meeting after the reception of said petition, and thereupon said Board of Commissioners shall, within thirty days thereafter, proceed to locate, open to public use, establish, change or vacate such road, highway, street or alley. Before opening any new road, street or alley, or changing same through private property, such property shall be condemned for public use as follows: The Board of County Commissioners shall appoint one disinterested person, and the owners or agents of the land through which said highway may run, shall select one such person; and the two shall proceed to view out such road, street or alley, and shall ascertain and make estimates of damages done to any property through which it may be located, changed or vacated, after deducting any advantages arising from such location, change or vacation of such road, street or alley, to the owner or owners of such property; *provided*, if the owner or owners shall refuse or neglect, for a period of ten days after receiving notice from said board of its said appointment, to appoint such person on their part, it shall be the duty of said board to appoint such person for them; *and provided further*, that if there shall be more than one owner of land through which said highway may run they shall unite in such appointments. If the two viewers cannot agree as to such damages, then they shall choose a third person, and the three persons so selected as viewers shall be authorized to administer oaths, compel the attendance of witnesses before them as road viewers, and their decision in the matter shall be final; *and provided further*, that said viewers shall take an oath prior to entering upon the discharge of their duties, before some person authorized to administer oaths, to faithfully discharge the duties of their trust in accordance with the provisions of this Act; *and provided further*, that the parties aggrieved by the decision of such road viewers may

commence action in the district court within twenty days from the date of such decision to set aside their award; and upon the final award and decision of such damages, the Board of County Commissioners shall order the Road Supervisor of the district to open, establish, change or vacate, as the case may be, such road, street or alley, according to the petition aforesaid; *provided*, that in no case shall the Commissioners cause any road or street to be opened where the same shall run diagonally through any lands or lot, so as to greatly impair it in shape, or through an orchard four years old, without the consent of the owner or owners thereof; and in all cases they shall follow legal subdivisional lines of the government surveys or of town plats, where the same is practicable. *As amended, Stats. 1895, 35.*

For condemnation of property, see Secs. 3918-3930.

Width of Roads.

480. SEC. 11. The width of all public highways hereafter constructed shall be regulated and established by the Boards of County Commissioners; *provided*, no such highways shall exceed in width sixty feet. *As amended, Stats. 1877, 143.*

The omitted sections and portions of sections are rendered void by the following Act of 1887, 99:

An Act to abolish the office of Road Supervisor.

Approved March 2, 1887, 99.

Road Supervisor Abolished.

481. SECTION 1. The office of Road Supervisor, created by an Act of the legislature entitled an Act entitled "An Act in relation to public highways," approved March fifteenth, eighteen hundred and seventy-five; and the amendatory Act thereof entitled "An Act to amend an Act in relation to highways," approved March fifteenth, eighteen hundred and seventy-five; approved March second, eighteen hundred and seventy-five, is hereby abolished.

DOMESTIC RELATIONS.

An Act relating to marriage and divorce.

Approved November 28, 1861, 94.

Marriage a Civil Contract.

482. SECTION 1. That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

Legal Age—Consanguinity—Consent of Parents.

483. SEC. 2. Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins or cousins of the half blood, and not having a husband or wife living, may be joined in marriage; *provided, always*, that male persons under the age of twenty-one years, and female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians; *and provided, further*, that nothing in this Act shall be construed so as to make the issue of any marriage illegitimate if the person or persons shall not be of lawful age. *As amended, Stats. 1867, 88; 1891, 15.*

MARRIAGEABLE AGE—ISSUE OF MARRIAGE OF PERSONS NOT OF LAWFUL AGE LEGITIMATE
Fitzpatrick v. Fitzpatrick, 6 Nev. 63.

SEC. 3 repealed, Stats. 1867, 89.

Who May Perform Service—Minister to Have License.

484. SEC. 4. It shall be lawful for any ordained minister of any religious society or congregation within this state who has or hereafter may obtain a license for that purpose, as hereinafter provided, or for any Judge of a district court in his district, or Justice of the Peace in his county, to join together as husband and wife all persons not prohibited by this Act; *provided*, that the persons herein authorized to perform said marriage ceremony shall first receive the license previously issued, as hereinafter provided, to the persons wishing to be married. Any minister of the gospel, upon producing to the district court of any county, or district within this state, credentials of his being a regularly ordained minister of any religious society or congregation, shall be entitled to receive from said court a license authorizing him to solemnize marriages within this state so long as he shall continue a regular minister in such society or congregation. It shall be the duty of any minister licensed to solemnize marriages as aforesaid to produce to the County Clerk in every county in which he shall solemnize any marriage, his license so obtained, and the said Clerk shall thereupon enter the name of such minister upon record as a minister of the gospel duly authorized to solemnize marriages within this state, and shall note the court from which such license issued, for which service no charge shall be made by such Clerk. The record so made, or the certificate thereof by the said Clerk under the seal of his office, shall be good evidence that said minister was duly authorized to solemnize marriages. *As amended, Stats. 1867, 88; 1899, 47.*

COMMON LAW MARRIAGE BY CONTRACT *per verba de praesenti*. *Held*, valid and binding. *State v. Zichfeld*, 23 Nev. 304.

Marriage License—County Clerk to Grant—Fee of Clerk and Recorder.

485. SEC. 5. Previous to persons being joined in marriage, a license shall be obtained for that purpose from the County Clerk of the county where the persons, or one of them, intending to be married, reside (or in case the persons intending to be married do not reside in this state, then from any County Clerk in the state). The County Clerk may inquire of the party applying for marriage license upon oath or affirmation relative to the legality of such contemplated marriage; and if the Clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons intending to marry shall be under age, and shall not have been previously married, the consent of the parent or guardian shall be personally given before the Clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said Clerk and make oath that he saw the parent or guardian, whose name is annexed to such certificate subscribed, or heard him or her acknowledge the same, whereupon the Clerk is authorized to issue and sign such license, affixing thereto the seal of the county. The Clerk shall be entitled to receive as his fee for issuing the license the sum of one dollar, and if any Clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to and for the use of the party aggrieved. The Clerk shall also at the time of issuing such license collect the sum of one dollar and pay the same over to the County Recorder as his fee for recording the certificate named in section eight. *As amended, Stats. 1867, 89; 1899, 48.*

Solemnization.

486. SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare, in the presence of the Judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

Marriage Certificate.

487. SEC. 7. When a marriage shall have been solemnized the persons solemnizing the same shall give to each of the parties, if required, a certificate

thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, and the time and place of such marriage. *As amended, Stats. 1867, 89.*

Record of Certificate—Form Of.

488. SEC. 8. Every person solemnizing a marriage shall make a record thereof, and within thirty days after such marriage shall make and deliver to the Recorder of Deeds of the county where such license was issued a certificate, under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form:

State of Nevada, County of _____, ss.

This is to certify that the undersigned, a Justice of the Peace of said county (minister of the gospel, or Judge, etc., as the case may be), did on the ____ day of _____, A. D. 18____, join in lawful wedlock A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses. J. P., Justice of the Peace. *As amended, Stats. 1899, 48.*

Certificate to Be Filed and Recorded by County Recorder.

489. SEC. 9. All such certificates shall be filed and recorded by the said Recorder in a book to be kept by him for that purpose; and he shall receive a fee of one dollar from the County Clerk who shall be entitled to collect the same from the parties applying for such license before he issues the license. *As amended, Stats. 1899, 49.*

Certificate, to Record.

490. SEC. 10. Every person solemnizing a marriage who shall neglect to make and deliver to the Recorder a certificate thereof within the time above specified, shall forfeit for such neglect a sum not less than twenty nor more than fifty dollars; and every Recorder who shall neglect to record such certificate so delivered shall forfeit the like penalty.

False Certificate.

491. SEC. 11. If any person shall willfully make any false certificate of any marriage or pretended marriage, he shall forfeit for every such offense a sum not exceeding five hundred dollars, or may be imprisoned in the territorial prison not exceeding one year, or by both such fine and imprisonment.

Persons Unauthorized Performing Ceremony.

492. SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall on conviction be fined in any sum not exceeding five hundred dollars, and be imprisoned in the territorial prison until such fine is paid.

Not Invalid.

493. SEC. 13. No marriage solemnized before any person professing to be a Judge, Justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Presumptive Evidence Of.

494. SEC. 14. The original certificate and records of marriage made by the Judge, Justice, or minister, as prescribed in this Act, and the record thereof by the Recorder of the county, or a copy of such record duly certified by such Recorder, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Illegitimate Children.

495. SEC. 15. Illegitimate children shall become legitimized by the subsequent marriage of their parents with each other.

Fines—Application Of.

496. SEC. 16. All fines and forfeitures arising in consequence of a breach of this Act shall be paid into the county treasury for the use of common schools; and in all cases, when a violation of the provisions of this Act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the County Treasurer.

Friends or Quakers.

497. SEC. 17. All marriages solemnized among the people called "Friends" or "Quakers," in the forms heretofore practiced and in use in their meetings, shall be good and valid.

DIVORCE AND ALIMONY.**When Void Without Decree of Divorce.**

498. SEC. 18. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void without any decree of divorce or other legal proceedings.

Parties Incapable of Assenting—When Void.

499. SEC. 19. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

When Not to Be Judged a Nullity.

500. SEC. 20. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife after such insane person was restored to a sound mind.

WANT OF LEGAL AGE NO GROUNDS FOR DIVORCE, WHEN. *Fitzpatrick v. Fitzpatrick*, 6 Nev. 63.

Parties May File Complaint.

501. SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the probate court of the county where the parties or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Divorce from Bonds of Matrimony, How Obtained—Grounds for Divorce.

502. SEC. 22. Divorce from the bonds of matrimony may be obtained, by complaint under oath, to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided six months before suit be brought, for the following causes:

Impotency.

First—Impotency at the time of the marriage continuing to the time of the divorce.

Adultery.

Second—Adultery, since the marriage, remaining unforgiven.

Desertion.

Third—Willful desertion, at any time, of either party by the other, for the period of one year.

Infamy.

Fourth—Conviction of felony or infamous crime.

Drunkenness.

Fifth—Habitual gross drunkenness, contracted since marriage of either party, which shall incapacitate such party from contributing his or her share to the support of the family.

Cruelty.

Sixth—Extreme cruelty in either party.

Neglect to Provide, etc.

Seventh—Neglect of the husband, for the period of one year, to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband, which he could not avoid by ordinary industry. *As amended, Stats. 1875, 63.*

1. MARRIAGE AND DIVORCE—COMMON LAW. Law as administered by ecclesiastical courts part of the common law of this country, except as altered by statute. *Wuest v. Wuest, 17 Nev. 217.*

DEFENDANT ENTITLED TO AFFIRMATIVE RELIEF. *Id.*

Reed v. Reed 4 Nev.

2. PROVOCATION OF VIOLENCE. A divorce will not be granted on the ground of extreme cruelty where it appears that the complaining party has willfully provoked the violence or misconduct complained of, unless such violence greatly exceeds the provocation. *Reed v. Reed, 4 Nev. 395.*

EXTREME CRUELTY WITHOUT PERSONAL VIOLENCE. There may be extreme cruelty without the slightest violence; if it appear probable that the life of one of the parties will be rendered miserable by any character of misconduct on the part of the other, although no personal violence be apprehended, a separation should be decreed. *Id.*

SINGLE ACTS OF VIOLENCE. Not sufficient grounds. *Id.*

EXTREME CRUELTY. What will constitute, depends on character of respective parties. *Id.*

3. EXTREME CRUELTY—WHAT MAY CONSTITUTE—SUFFICIENCY OF ALLEGATIONS IN COMPLAINT. Evidence not limited to facts charged. *Gardner v. Gardner, 23 Nev. 207.*

4. EXTREME CRUELTY—WHAT MAY CONSTITUTE. *Kelley v. Kelley, 18 Nev. 48.*

CRUELTY OF WIFE. False accusations of infidelity on part of husband may constitute extreme cruelty. *Id.*

Non-Resident Defendants to Be Notified.

503. SEC. 23. If the defendant is not a resident of the territory, or cannot, for any cause, be personally summoned, the court, or Judge, in vacation, may order notice of the pendency of the suit to be given in such manner, and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear, and make defense, at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard, and the cause decided, at that term; or compulsory process may be had to obtain an appearance, or answer, if it be necessary to the disposition of property, or of children.

Disposition of Children of Divorced Parents.

504. SEC. 24. The court, in granting a divorce, shall make such disposition of, and provision for, the children, as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and when, at the commencement, or during the pendency, of the suit, it shall be made to appear to the court, or to the Judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been or is likely to be, taken or detained from her, or that any child of either party, has been, or is likely to be taken, or removed, by, or at the instance of, the other party, out of

the country, or concealed within the same, it shall be the duty of the court, or of such Judge in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual, by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case; *provided*, the court, upon good cause shown, may change the custody of such minor children, if they should be satisfied that such change will be for the welfare of such children.

Disposition of Property for Benefit of Children.

505. SEC. 25. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if after the filing of the petition, it shall be made to appear probable to the court or the Judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

Testimony and Pleadings.

506. SEC. 26. The testimony of witnesses in suits for divorce, shall be given orally in court, with the right to either party to take and use depositions, on the same terms and in the same manner as in actions at law; and the proceedings, pleadings, and practice, shall conform to those at law, as nearly as conveniently may be, but all preliminary and final orders may be in such form as will best effect the object of this Act, and produce substantial justice.

Wife's Proportion of Property—Pendente Lite—Specific Property May Be Ordered Applied.

507. SEC. 27. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court may set apart such portion for her support, and the support of their children, as shall be deemed just and equitable. In any suit for divorce now pending, or which may hereafter be commenced, the court or Judge may, in its discretion, upon application, of which due notice shall have been given to the husband, or his attorney, at any time after the filing of the complaint, require the husband to pay such sums as may be necessary to enable the wife to carry on or defend such suit, and for her support and the support of the children of the parties during the pendency of such suit; and the court or Judge may direct the application of specific property of the husband to such object, and may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing to the husband from any quarter, and may enforce all orders made in this behalf, as is provided in section twenty-four of this Act. *As amended, Stats. 1865, 99.*

1. *ALIMONY pendente lite.* Under the statute providing for the payment of alimony *pendente lite*, the court cannot make an order for the payment of past expenses after the suit has been finally decided against the wife, although the motion was made before the decision of the case. *Wilde v. Wilde*, 2 Nev. 306.

NOTICE. Means statutory written notice of five days. *Id.*

2. **NOTICE MUST BE SERVED UPON ATTORNEY NOT PARTY.** *Lake v. Lake, 16 Nev. 363.*

WHERE NOTICE HAS ACCOMPLISHED ITS PURPOSE ERROR NOT PREJUDICIAL. *Id.*

ALLOWANCE OF COUNSEL FEES. May be made as often as circumstances of case require. *Id.*

3. **ALLOWANCE OF EXPENSES FOR WITNESSES.** *Sheckles v. Sheckles, 3 Nev. 404.*

4. **DISPOSITION OF COMMON PROPERTY ON DIVORCE.** In an action for divorce for extreme cruelty, where nothing is said in the pleading about the disposition of the common property, it is error to award it all to one of the parties. *Howe v. Howe, 4 Nev. 469.*

5. **DIVORCE—WHEN IT AFFECTS INDIVIDUAL PROPERTY** It was the intention of the legislature by the Act of March 7, 1865, that in case of a divorce for the misconduct of the husband, other than imprisonment or adultery, his individual or sole property should be subject to the order of the court, as provided in Section 27. *Darrenberger v. Haupt, 10 Nev. 41.*

6. **PROPERTY ACQUIRED BEFORE ADOPTION OF CONSTITUTION.** Governed by common law rules. *Id. Lake v. Bender, 18 Nev. 361.*

7. **DIVORCE—PROPERTY SET APART FOR SUPPORT OF WIFE—STATUTES CONSTRUED.** When a divorce is granted at the instance of the wife against her husband, on the ground of extreme cruelty, the court is authorized to set apart such portion of the husband's separate property for the support of the wife and children as shall be deemed just, and the court, in a proper case, has the power under the statute to invest the wife with the husband's title to the property as one of the means of securing such support. (*Wuest v. Wuest, 17 Nev. 221, affirmed.*) *Powell v. Campbell, 20 Nev. 232.*

RULE of *lis pendens* applies against a purchaser *pendente lite* with knowledge. *Id.*

STATEMENT OF WIFE EXCLUDED FROM EVIDENCE. *Id.*

8. **ALLOWANCE TO WIFE.** Left to legal discretion of court. *Lake v. Bender, 18 Nev. 362.*

Effect of Divorce—Female's Name May Be Changed.

508. SEC. 28. Whenever an order of divorce from the bonds of matrimony is granted in this territory by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall, in its order, decree and appoint.

Jury Trial.

509. SEC. 29. Either party, on application to the court, may be entitled, at such trial, to have the issue of fact involved in such case and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.

An Act defining the rights of husband and wife.

Approved March 10, 1873, 193.

Separate Property of Wife—Of Husband.

510. SECTION 1. All property of the wife, owned by her before marriage, and that acquired by her afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property; and all property of the husband, owned by him before marriage, and that acquired by him afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

GIFT OF HUSBAND TO WIFE—WHEN VALID. *Bailey v. Littell, 24 Nev.*

Community Property.

511. SEC. 2. All other property acquired, after marriage, by either husband or wife, or both, except as provided in sections fourteen and fifteen in this Act, is community property.

1. **PROPERTY ACQUIRED DURING COVERTURE—COMMUNITY PROPERTY—PRESUMPTION—BURDEN OF PROOF—EVIDENCE.** The presumption is that all property acquired during coverture belongs to the community, and the burden rests on the person claiming it as separate property to overcome this presumption by proof sufficiently clear and satisfactory to convince the court and jury of the correctness of such claim. *Lake v. Bender*, 18 Nev. 361.

COMMUNITY PROPERTY DEFINED. *Id.*

STATUTES CONSTRUED. *Id.*

2. **HUSBAND'S OWNERSHIP OF COMMON PROPERTY.** In a complaint by a husband to recover a chose in action given in the name of his wife, but belonging to the community, it is sufficient for him, to show his right of action, to allege either that he is the owner or that it is common property, and even both allegations in the same complaint will not render it demurrable. *Crow v. Vansickle*, 6 Nev. 146.

WIFE NOT A PARTY TO ACTION TO RECOVER COMMON PROPERTY. *Id.*

Inventory Recorded—Supplemental Inventory.

512. SEC. 3. A full and complete inventory of the separate property of the wife, exclusive of money in specie, must be made out and signed by her, acknowledged or proved in the manner required for the acknowledgment of proof of a conveyance of real property by an unmarried woman, and shall be recorded, if she be a resident of this state, in the office of the Recorder of the county in which she resides; and if there be included in such inventory any real estate lying in any other county, also in the office of the Recorder of such other county; or, if she be not a resident of this state, then in the office of the Recorder of each county wherein any portion of the property, real or personal, is situated, located, or used; and from time to time thereafter, a further and supplemental inventory shall be made out, signed, acknowledged, or proved and recorded in like manner, of all other separate property afterwards acquired by the wife, excepting money whilst in specie and unconverted, and the rents, issues, and profits of her separate property, included in the original or any subsequent inventory, if the same be money, so long as it shall remain in specie and unconverted.

Filing to Be Notice.

513. SEC. 4. When the wife is a resident of this state, the filing for record of the inventory of her separate property in the office of the Recorder of the county in which she resides is notice of her title to the same, except as to any real estate situate in another county; and as to such real estate, the filing for record of the inventory thereof, in the office of the Recorder of the county wherein the same is situate, is notice of her title thereto. When the wife is not a resident of this state, the filing for record of the inventory of her separate property in the office of the Recorder of the county wherein any portion of such property, real or personal, included in the inventory is situate, located, or used, is notice of her title as to all such property situate, located, or used in such county.

Failure to File, Effect Of.

514. SEC. 5. When the wife is a resident of this state, the failure to file for record an inventory of her separate property in the office of the Recorder of the county in which she resides, or the omission from the inventory, filed for record in such office, of any part of such property, except as to real estate situate in another county, is prima facie evidence, as between the wife and purchasers in good faith and for a valuable consideration from the husband, that the property of which no inventory has been so filed, or which has been omitted from the inventory, is not the separate property of the wife; and as to any real estate situate in another county, the failure to file for record an inventory thereof in the office of the Recorder of the county wherein the same is situate, or the omission from the inventory filed for record in such office, of any part of such real estate, is prima facie evidence, as between the wife and such purchasers as aforesaid, that such real estate of which no inventory has been so filed, or which has been omitted from the inventory, is not her separate property. When

the wife is not a resident of this state, the failure to file for record an inventory of her separate property in the office of the Recorder of the county wherein any portion of such property is situate, located, or used, or the omission from the inventory filed in such office, of any part of such property, is, as to all such property situate, located, or used in that county, of which no inventory has been so filed, or which has been omitted from the inventory, *prima facie* evidence, as between the wife and such purchasers as aforesaid, that the same is not her separate property.

Husband to Control Community Property.

515. SEC. 6. The husband has the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate; *provided*, that no deed of conveyance, or mortgage, of a homestead as now defined by law regardless of whether a declaration thereof has been filed or not, shall be valid for any purpose whatever unless both the husband and wife execute and acknowledge the same as now provided by law for the conveyance of real estate. *As amended, Stats. 1897, 24.*

No Estate in Dower or by Courtesy.

516. SEC. 7. No estate is allowed the husband as tenant by courtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

Tenants in Common.

517. SEC. 8. A husband or wife may hold real or personal property as joint tenants, tenants in common, or as community property.

Wife to Control Her Separate Property.

518. SEC. 9. The wife may, without the consent of her husband, convey, charge, incumber, or otherwise in any manner dispose of her separate property.

1. MARRIED WOMEN—MORTGAGE. A married woman who holds the title to her separate property may execute a mortgage thereon in her own name. *Richards v. Hutchinson*, 18 Nev. 215.

2. MARRIED WOMEN MAY BIND SEPARATE ESTATE. Rights and liabilities same as other citizens. *McCarthy v. David*, 18 Nev. 310.

STATUTE OF FRAUDS, WHEN NOT APPLICABLE—ASSIGNMENT OF NOTE AND MORTGAGE BY MARRIED WOMEN—HOW MADE—ACKNOWLEDGMENT. *Id.*

3. RIGHT OF MARRIED WOMAN TO CONTRACT IN CASE OF ABANDONMENT. The exception to the common law disability of a married woman to contract or maintain a suit, in case of abandonment by her husband, does not apply except in case the abandonment is absolute and embraces a total renunciation of marital relations. *Beckman v. Stanley*, 8 Nev. 257.

CONVEYANCE BY ABANDONED WIFE, HUSBAND MUST JOIN. The right of married women to alienate land in this state, whether their separate estate or community property, does not depend upon the common law, but upon our statutes; so that a wife's deed or mortgage, without her husband's joining in it, though he has abandoned her for years, is inoperative and void. *Id.*

Upon Death of Wife the Community Property to Go to Husband Except in Case of Abandonment.

519. SEC. 10. Upon the death of the wife the entire community property belongs, without administration, to the surviving husband, except that in case the husband shall have abandoned his wife and lived separate and apart from her without such cause as would have entitled him to a divorce, the half of the community property subject to the payment of its equal share of the debts chargeable to the estate owned in community by the husband and wife, is at her testamentary disposition in the same manner as her separate property, and in the absence of such disposition goes to her descendants equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, goes to her other heirs at law, exclusive of her husband.

Community Property Upon Death of Husband, How Disposed of—Homestead Set Apart for Widow and Minor Heirs—Property Subject to Debts of Husband.

520. SEC. 11. Upon the death of the husband one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his surviving children equally, and in the absence of both such disposition and surviving children, the entire community property belongs without administration to the surviving wife, except as hereinafter provided, subject, however, to all debts contracted by the husband during his life that were not barred by the statute of limitation at the time of his death; *provided*, however, that the homestead set apart by the husband and wife, or either of them, before his death, and such other property as may be exempt by law from execution or forced sale, shall be set apart for the use of the widow and minor heirs, and if no minor heirs, for the use of the widow. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance and charges and expense of administration; *provided*, however, that if in the absence of said testamentary disposition the surviving wife and children, and in the absence of such children the wife shall pay or cause to be paid all indebtedness legally due from said estate, or secure the payment of the same to the satisfaction of the creditors of said estate, then and in such case the said community property shall not be subject to administration. *As amended, Stats. 1881, 103; 1883, 16.*

Division of Property in Case of Divorce.

521. SEC. 12. In case of the dissolution of the marriage by decree of any court of competent jurisdiction, the community property must be equally divided between the parties, and the court granting the decree must make such order for the division of the community property, or the sale and equal distribution of the proceeds thereof, as the nature of the case may require; *provided*, that when the decree of divorce is rendered on the ground of adultery or extreme cruelty, the party found guilty thereof is only entitled to such portion of the community property as the court granting the decree may, in its discretion, from the facts in the case, deem just and allow; and such allowance shall be subject to revision on appeal in all respects, including the exercise of discretion, by the court below.

Earnings of Wife.

522. SEC. 13. The earnings of the wife are not liable for the debts of the husband.

Earnings of Wife and Minor Children, etc.

523. SEC. 14. The earnings and accumulations of the wife and of her minor children, living with her, or in her custody, while she is living separate from her husband, are the separate property of the wife.

Earnings of Wife Deemed Gift, When.

524. SEC. 15. When the husband has allowed the wife to appropriate to her own use her earnings, the same, with the issues and profits thereof, is deemed a gift from him to her, and is, with such issues and profits, her separate property.

Debts of Wife.

525. SEC. 16. The separate property of the husband is not liable for the debts of the wife, contracted before the marriage.

Debts of Husband.

526. SEC. 17. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Separate Property.

527. SEC. 18. Except as mentioned in the next section, neither husband nor wife has any interest in the property of the other.

Contract Between Husband and Wife, etc.

528. SEC. 19. Either husband or wife may enter into any contract, engagement, or transaction with the other, or with any other person, respecting property, which either might enter into if unmarried, subject in any contract, engagement, or transaction between themselves, to the general rules which control the actions of persons occupying relations of confidence and trust towards each other.

Crawford v. Crawford, 24 Nev.

Contract of Separation.

529. SEC. 20. A husband and wife cannot by any contract with each other alter their legal relations except as to property, and except that they may agree to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Consideration Of.

530. SEC. 21. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

Necessaries Furnished Wife, Husband Bound For.

531. SEC. 22. If the husband neglects to make adequate provision for the support of his wife, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

Husband Not Liable, When.

532. SEC. 23. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him.

Support of Husband by Wife, When Required.

533. SEC. 24. The wife must support the husband out of her separate property, when he has no separate property, and they have no community property, and he, from infirmity, is not able or competent to support himself.

Wife May Sue and Be Sued.

534. SEC. 25. When the wife is living separate and apart from her husband she may sue and be sued alone.

Property Rights, etc.

535. SEC. 26. The property rights of husband and wife are governed by this Act, unless there is a marriage contract or settlement containing stipulations contrary thereto.

Marriage Contracts.

536. SEC. 27. All marriage contracts or settlements must be in writing, and executed and acknowledged or proved in like manner as a conveyance of land is required to be executed and acknowledged or proved.

Marriage Contract to Be Recorded.

537. SEC. 28. When such marriage contract or settlement is acknowledged or proved it must be recorded in the office of the Recorder, of every county in which any real estate may be situated which is conveyed or affected by such contract.

Record of Contract.

538. SEC. 29. When such marriage contract or settlement is deposited in the Recorder's office for record it shall, as to all property affected thereby in the county where the same is deposited, impart full notice to all persons of the contents thereof.

Contract Not Valid, When.

539. SEC. 30. No such marriage contract or settlement shall be valid as to any real estate, or affect the same, except as between the parties thereto, until it shall be deposited for record with the Recorder of the county in which such real estate is situate.

Marriage Contract of Minors.

540. SEC. 31. A minor, capable of contracting marriage, may make a valid marriage contract or settlement.

Acknowledgment of Wife to Convey Realty.

541. SEC. 32. No estate in the real property a married woman possesses is affected by any conveyance or other instrument, except a will purporting to be executed or acknowledged by her, unless the same be acknowledged by her in the manner that conveyances by married women are required to be acknowledged.

Power of Attorney.

542. SEC. 33. A power of attorney of a married woman, authorizing the execution of an instrument conveying or affecting her real property, shall be acknowledged as above mentioned.

Acknowledgment, Effect Of.

543. SEC. 34. A conveyance or other instrument affecting or relating to real estate, except a will made by a married woman, has no validity until acknowledged as above provided; but when so acknowledged has the same effect as if she were unmarried.

Acts Repealed.

544. SEC. 35. An Act entitled "An Act defining the rights of husband and wife," approved March seventh, eighteen hundred and sixty-five [p. 239], and all other Acts and parts of Acts in conflict with this Act, are hereby repealed; *provided*, that no rights already vested, or any proceeding already taken, shall be affected by anything in this Act contained.

An Act to authorize married women to transact business in their own names as sole traders.

Approved February 6, 1867, 49.

Right to Transact Business.

545. SECTION 1. Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this Act.

Applicants to Give Notice—Hearing of Application—Order.

546. SEC. 2. Any married woman residing within this state, desirous to avail herself of the benefit of this Act, shall give notice thereof, by advertising in some public newspaper published in the county in which she has resided, for four successive weeks preceding such application; *provided*, if no newspaper be published in said county, said publication shall be made by posting advertisements in three of the most public places in said county, four weeks prior to the day of application. Such notice shall set forth that it is her intention to make application to the district court of said county, on the day therein named, for an order of said court permitting her to carry on business in her own name and on her own account; and it shall specially set forth the nature of the business to be carried on. On the day named in the notice, or at such future time as the court may appoint, on filing proof of publication, the court shall proceed to examine the applicant, on oath, as to the reasons which induce her to make the application; and if it appear to the court that a proper case exists, it shall make an order, which shall be entered on the minutes, that the applicant be authorized

and empowered to carry on, in her own name and on her own account, the business, trade, profession, or art named in the notice; but the insolvency of the husband, apart from other causes tending to prevent his supporting his family, shall not be deemed to be sufficient cause for granting this application. Any creditor of the husband may oppose such application, and may show that it is made for the purpose of defrauding such creditor, and preventing him from collecting his debt, or will occasion such result; and if it shall so appear to the court, the application shall be denied. On the hearing, witness may be examined on behalf of either party. Before making the order, the court or Judge shall administer to the applicant the following oath:

Oath.

"I, A. B., do, in the presence of Almighty God, truly and solemnly swear, that this application is made in good faith, for the purpose of enabling me to support myself and my children (if the applicant have minor children), and not with any view to defraud, delay, or hinder any creditor or creditors of my husband; and that of the moneys so to be used in said business, not more than five hundred dollars has come, either directly or indirectly, from my husband. So help me God."

A certified copy of such order, with the said oath indorsed thereon, shall be recorded in the office of the Recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

Copy of Order to Be Recorded—Rights and Liabilities of Sole Traders.

547. SEC. 3. After the order has been duly made and recorded, as provided in the second section of this Act, the person named shall be entitled to carry on such business in her own name, and the property revenues, moneys, and credits, so invested, shall belong exclusively to such married woman, and shall not be liable for any debts of her husband; and said married woman shall be allowed all the privileges, and be liable to all legal process, now or hereafter provided by law, against debtors and creditors, and may sue and be sued alone, without being joined with her husband. But nothing contained in this Act shall be deemed to authorize a married woman to carry on business in her own name when the same is managed or superintended by her husband.

Maintenance of Children.

548. SEC. 4. Any married woman availing herself of the benefit of this Act, shall be responsible for the maintenance of her children.

Husband Not Responsible for Debt, etc.

549. SEC. 5. The husband of the wife availing herself of the benefit of this Act, shall not be responsible for any debts contracted by her in the course of the said business, without the special consent of her husband, given in writing; nor shall his separate property be taken on execution for any debts contracted by her.

SOLE TRADER'S ACT—CONSTRUCTION OF—RIGHTS OF CREDITORS. The sole trader Act was passed for the protection of married women. It was designed only to protect the wife against an improvident and worthless husband. The business in which she is engaged cannot be carried on for the purpose of defrauding any creditor of her husband. *Young-worthy v. Jewell*, 15 Nev. 45.

MEANING OF THE WORDS "MANAGED" AND "SUPERINTENDED." The words "managed" and "superintended," as used in the statute, are synonymous. The husband cannot direct, conduct, or control the business in which the wife is engaged, or any part of it. *Id.*

WHEN COMMUNITY PROPERTY. *Id.*

An Act to exempt the homestead and other property from forced sale in certain cases.

Approved March 6, 1865, '225.

Homesteads—Amount Exempt—Except Purchase Money—Mortgages—Selection of Property—Held as Joint Tenants.

550. SECTION 1. The homestead, consisting of a quantity of land, together with the dwelling-house thereon and its appurtenances, not exceeding in value five thousand dollars, to be selected by the husband and wife, or either of them, or other head of a family, shall not be subject to forced sale on execution, or any final process from any court, for any debt or liability contracted or incurred after November thirteenth, in the year of our Lord one thousand eight hundred and sixty-one, except process to enforce the payment of the purchase money for such premises, or for improvements made thereon, or for legal taxes imposed thereon, or for the payment of any mortgage thereon, executed and given by both husband and wife, when that relation exists. Said selection shall be made by either the husband or wife, or both of them, or other head of a family, declaring their intention in writing to claim the same as a homestead. Said declaration shall state when made by a married person or persons that they or either of them are married, or if not married, that he or she is the head of a family, and they or either of them, as the case may be, are, at the time of making such declaration, residing with their family, or with the person or persons under their care and maintenance, on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead, which declaration shall be signed by the party or parties making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded; and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants; *provided*, that if the property declared upon as a homestead be the separate property of either spouse, both must join in the execution and acknowledgment of the declaration; and if such property shall retain its character of separate property until the death of one or the other of such spouses, then and in that event the homestead right shall cease in and upon said property, and the same belong to the party (or his or her heirs) to whom it belonged when filed upon as a homestead; *and, provided further*, that tenants in common may declare for homestead rights upon their respective estates in lands, and the improvements thereon; and hold and enjoy homestead rights and privileges therein, subject to the rights of their cotenants, to enforce partition of such common property as in other cases of tenants in common. *As amended, Stats. 1879, 140.*

1. **HOMESTEAD—WHAT IT INCLUDES.** Tract of land on which homestead is located to value of \$5,000, regardless of other buildings, and uses to which they are put. *Clarke v. Shannon*, 1 Nev. 568; *Smith v. Stewart*, 13 Nev. 65.

2. **RIGHT OF WIFE TO SELECT HOMESTEAD FROM COMMUNITY PROPERTY.** *Adams v. Baker*, 24 Nev.

3. **HOW DEDICATED.** Erecting a house and residing therein with one's family dedicates that building as a homestead. It makes no difference that the house erected is large or suitable for a lodging house, and used for such purpose. *Goldman v. Clark*, 1 Nev. 607.

STATUTE REQUIRING CLAIM TO BE MADE MERELY DIRECTORY. *Id.*

HOW DIVESTED. *Id.*

4. **HOMESTEAD—DECLARATION MUST BE RECORDED.** No person is entitled to the benefit of the homestead law without filing a written declaration claiming the premises as a homestead. *Lachman v. Walker*, 15 Nev. 422.

5. **HOMESTEAD—DECLARATION OF, MUST BE RECORDED—RIGHT OF HUSBAND TO MORTGAGE.** A homestead, in fact, in the absence of a recorded declaration that it has been selected as such, can be mortgaged by the husband alone without the consent of his wife. *Child v. Singleton*, 15 Nev. 461.

6. **SELECTION, WHEN MAY BE MADE.** Property which possesses the characteristics of a homestead, may be selected and recorded as such at any time before actual sale under execution. The levy of an attachment will not prevent such selection. *Hawthorne v. Smith*, 3 Nev. 182.

7. **HOMESTEAD CANNOT BE CARVED OUT OF PARTNERSHIP PROPERTY.** *Terry v. Barry*, 13 Nev. 514.
8. **HOMESTEAD BUILT OUT OF PARTNERSHIP FUNDS.** Not exempt. *Rhodes v. Williams*, 12 Nev. 20.
9. **PUBLIC LANDS—HOMESTEAD—TENANTS IN COMMON.** A tenant in common cannot acquire a right of homestead to government land of which he is in possession for himself and his cotenants. *Reinhart v. Bradshaw*, 19 Nev. 225.

HOMESTEAD UNDER HOMESTEAD ACT. Under the homestead Act, the homestead is exempted from liability for the debts of the owner, so long, at least, as he continues to be the head of the family, no matter whether the debts were contracted before or after the family relation commenced, or before or after the homestead was dedicated. *Estate of David Walley*, 11 Nev. 261.

ABANDONMENT OF HOMESTEAD. *Id.*

Exemption Not to Extend to Liens, etc.—Abandonment.

551. **SEC. 2.** Such exemption shall not extend to any mechanic's, laborer's, or vendor's lien lawfully obtained; but no mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness upon the homestead property, shall be valid for any purpose whatsoever; *provided*, that a mortgage or alienation to secure the purchase money, or pay the purchase money, shall be valid if the signature of the wife be obtained to the same, and acknowledged by her separately and apart from her husband; nor shall said homestead property be deemed to be abandoned without a declaration thereof in writing, signed and acknowledged by both husband and wife, or other head of a family, and recorded in the same office and in the same manner as the declaration of claim to the same is required to be recorded, and the acknowledgment of the wife to such declaration of abandonment shall be taken separately and apart from her husband; *provided*, that if the wife be not a resident of this state, her signature and the acknowledgment thereof shall not be necessary to the validity of any mortgage or alienation of said homestead before it becomes the homestead of the debtor.

1. **PORTION OF SEC. 2 UNCONSTITUTIONAL.** That portion of above section which declares that no mortgage or alienation of any kind for the purpose of securing a loan shall be valid, is unconstitutional. *Dunker v. Chedic*, 4 Nev. 378.

CONSTITUTIONAL CONSTRUCTION AS TO HOMESTEAD MORTGAGE. *Id.*

2. **NO HOMESTEAD AS AGAINST LIEN FOR PURCHASE MONEY.** There can be no homestead right acquired in property as against the purchase money, unless the lien therefor, whether created by mortgage or existing by way of vendor's lien, has been relieved in some lawful way. *Hopper v. Parkinson*, 5 Nev. 233.

Appraisalment When Value Exceeds Five Thousand Dollars—Excess to Be Sold—Entire Premises to Be Sold, When.

552. **SEC. 3.** Whenever execution has been issued against the property of a party claiming said property as a homestead, and the creditor in such judgment shall make oath before the Judge of the district court of the county in which such premises are situated, that the cash value of such premises exceeds, to the best of the creditor's information and belief, the sum of five thousand dollars, it shall be the duty of such Judge, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers to estimate and report as to the value of such premises, and if the same exceeds said sum, whether they can be divided so as to leave the premises amounting to the homestead exemption without material injury. If it appear, upon such report, to the satisfaction of the Judge, that the premises can be thus divided, he shall order the excess to be sold under execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this Act, he shall order the entire premises to be sold, and out of the proceeds the sum of five thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction on the execution; *provided*, that no bid shall be received by the officer making the sale under five thousand dollars; and *provided, further*, that when

the execution is against the husband, whose wife is living, the Judge may, in his direction, direct the five thousand dollars to be deposited in court, to be paid out only upon the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition of the husband as were the original homestead premises.

To Revert in Case of Death—Proviso—Exemption and Descent to Heirs—Litigation.

553. SEC. 4. The homestead and all other property exempt by law from sale under execution, shall, upon the death of either spouse, be set apart by the court as the sole property of the surviving spouse, for his or her benefit and that of his or her legitimate child or children; and in the event of there being no surviving spouse, or legitimate child or children of either, then the property shall be subject to administration and to the payment of his or her debts and liabilities; *provided*, that the exemption made by this Act and the Act of which it is amendatory shall not extend to unmarried persons, except when they have the care and maintenance of minor brothers or sisters, or both, or of a brother's or sister's minor children, or of a father or mother, or of grandparents, or unmarried sisters living in the house with them; and in all such cases the exemption shall cease upon the cessation of the terms upon which it is granted; and upon the death of such unmarried person, the property shall descend to his or her heirs, as in other cases, unless disposed of by will, subject to administration and the payment of debts and liabilities; *and, provided further*, that no exemption to the surviving spouse shall be allowed in cases where the homestead declaration has been filed upon the separate property of either husband or wife, as provided in section one of this Act; *provided*, nothing in this Act shall be held or construed to in any manner affect existing rights or pending litigation; but all such rights and litigation shall be determined by the Act before in force, and of which this Act is amendatory. *As amended, Stats. 1879, 141.*

1. HOMESTEAD LAW CONSTRUED—JOINT TENANCY. In construing the homestead law of this state: *Held*, that when a declaration of homestead is filed, the property is held by the husband and wife as joint tenants, and that upon the death of either the homestead property vests absolutely in the survivor. *Smith v. Shrieves, 13 Nev. 303.*

WHEN NO DECLARATION IS FILED. When no declaration has been filed upon the homestead property, no joint tenancy is created; in such case, if it was common property, one-half vested in the wife upon the death of the husband, and the other half vested in the minor children of said deceased and his wife. *Id.*

2. HOMESTEAD NOT LOST BY DEATH OF WIFE—STILL EXEMPT. *Roberts v. Greer, 22 Nev. 318.*

How to Convey When Wife is Insane.

554. SEC. 5. If the wife of any owner of a homestead shall be insane, and such owner shall desire to convey such homestead, or any interest therein, he may petition the district court in which such homestead may be situated for license to convey the same, and such court, upon reasonable and not less than twenty days notice of such petition to the kindred of such insane wife, residing in this state (which notice may be personal or by publication in some newspaper in the county, or directed by the court), may hear and determine such petition, and may license such owner to convey such homestead, or any interest therein, by his sole deed; which license shall be recorded in the office where such homestead is recorded, and thereupon such sole deed shall have the same operation as if such wife had been sane and joined in such deed.

Court to Make Special Order.

555. SEC. 6. On granting such license, such court may make such special order as to the investment or disposition of the funds derived from conveyance, as a court of chancery could do in the case of the funds of married women.

May Appeal.

556. SEC. 7. On the hearing of such petition for license, any of such kin-

dred may appear and be heard in the premises, and may appeal from any order made on the subject in the same manner provided for other appeals from decrees of the district court.

Property Not Exempt from Sale for Taxes.

557. SEC. 8. Nothing in this Act shall be so construed as exempting any real or personal property from sale for taxes.

Gold Coin.

558. SEC. 9. In all cases wherein an amount or sum is stated in this Act, the same shall be held and regarded as so much money in gold coin.

An Act to provide for the appointment of guardians and to prescribe their duties.

Approved March 11, 1899, 70.

Guardians.

559. SECTION 1. When necessary or convenient, guardians of the person and estate or either, of minors, who are inhabitants of, or reside in the county wherein application may be made; or minors who being now residents of the state, have any estate in such county, may be appointed as herein provided.

Petition to Be Filed in Relation to a Minor.

560. SEC. 2. To secure the appointment of a guardian, any relative of or any person interested in or befriending a minor, may file in the Clerk's office of the district court of the proper county a petition setting forth the necessary facts, and praying for the appointment of some designated person or persons as guardian or guardians. Upon such petition being filed, the Clerk shall give notice of the hearing thereof by posting in three public places in the county, one of which shall be at the front door of the court house thereof, a notice containing the name or names of the minor or minors, the party petitioning, the object, and the time and place for the hearing, which shall not be later than ten days after such posting. The party petitioning shall also cause notice to be served upon any person in whose custody or care such minor or minors may be; *provided*, if any person shall be nominated guardian by will, the court may, on the probate of such will, or at any time thereafter, appoint such person or persons guardian without any petition or notice.

1. **APPOINTMENT OF GUARDIAN—INTEREST OF MINOR.** In the appointment of a guardian the interest of the minor is the paramount consideration. The parental request is entitled to great weight and ought to prevail unless good reason to the contrary be shown. *Badenhoof v. Johnson*, 11 Nev. 87.

How Made. The District Judge has no authority to appoint any person guardian of the person or estate of a minor except upon a written petition in his behalf and after notice of his application. *Id.*

2. **IRREGULARITY IN APPOINTMENT OF GUARDIAN—WANT OF NOTICE TO FRIENDS.** The appointment of a stranger as guardian of the person and estate of an infant within three days after petition and without notice to the infant's relatives or the persons having its custody, is gravely irregular. *Re Winkleman*, 9 Nev. 303.

Court May Appoint.

561. SEC. 3. At the time fixed in the notice for the hearing, or at such other time to which the hearing may be continued, upon proof of the proper notices having been posted and served, the court may hear the petition and appoint a guardian or guardians. If a minor is above the age of fourteen years, he or she may nominate his or her own guardian, who, if approved by the Judge, shall be appointed accordingly, but if the guardian so nominated by the minor should not be approved by the Judge, or if the minor shall reside out of the state or is not fourteen years of age, the Judge may nominate and appoint the guardian.

Minor May Nominate, When.

562. SEC. 4. When a guardian of a minor under the age of fourteen years has been appointed by the Judge, such minor, at any time after attaining to said age, may nominate his or her guardian who, if approved by the Judge, shall be appointed.

Father or Mother May Act.

563. SEC. 5. The father, if living, and in case of his decease, the mother, being each competent to transact his or her own business, and not otherwise unsuitable, shall be entitled to the guardianship of the minor.

Until Such Minor Shall Attain a Certain Age.

564. SEC. 6. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of the estate, of which appointed, until such minor shall attain to the age of twenty-one years, if a male, or eighteen years, if a female, unless sooner discharged according to law.

Bond Required.

565. SEC. 7. Before the order appointing any person guardian under this Act shall take effect, and before letters shall issue, the person or persons so appointed shall take and subscribe the official oath, to be endorsed on the letters, and shall give bond to the minor or minors in such sum as the court may order, with at least two sufficient sureties to be approved by the court or Judge, and conditioned that the guardian shall faithfully execute the duties of his or her trust according to law; and the following conditions shall be deemed to form a part of such bond without being expressed therein:

Conditions Prescribed.

First—To make a full and true inventory of all the estate, real and personal, of the ward, and have the same appraised by three disinterested persons, to be appointed by the court or Judge, and to return and file in the Clerk's office, within twenty days after qualifying, such inventory and appraisement under oath.

Second—To manage all such estate according to law and for the best interest of the ward, and to discharge faithfully his or her trust in relation thereto, and also in relation to the care, custody and education of the ward.

Third—To render under oath a true account of the property, estate and moneys of the ward, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after appointment, and annually thereafter, and at such other time as the court may direct.

Fourth—At the expiration of his trust, to settle his or her final account with the court or with the ward if of legal age, or his or her legal representative, and to pay over all moneys, and deliver all the estate and effects remaining in his or her hands or justly chargeable to the guardian on such settlement, to the person or persons lawfully entitled thereto.

Letters of Guardianship.

Upon filing such bonds duly approved by the District Judge, and taking the oath of office as aforesaid, the Clerk shall issue letters of guardianship to the person or persons appointed. Letters of guardianship may be substantially in the following form:

Form Of.

(After properly entitling court and cause.) Whereas, by order of said court herein made and entered on the _____ day of _____, 1_____, _____ was (or were, as the case may be) appointed guardian of the (person and estate, or either, as the case may be) of _____, minor; and, whereas, the said _____ has (or have, as the case may be) duly qualified according to law, these letters are hereby issued to _____, as such guardian. Witness my hand and the seal of said court, this _____ day of _____, _____, Clerk.

Provided, if a person is appointed in a will to be guardian without bonds, the court may direct letters to issue to such on taking and subscribing the oath of office.

GUARDIAN'S BOND—TECHNICAL DEFECTS IN TO BE IGNORED. There is wisdom in the rule, and it is of the highest importance, that a guardian's bond, though inartistically drawn or slightly defective, is to be held sufficient to bind the obligors. The law regards not the form but the substance of such an obligation. *Deegan v. Deegan*, 22 Nev. 185.

JOINT INSTEAD OF SEVERAL AS TO OBLIGES—CONVERSION OF FUNDS OF WARD BY GUARDIAN—LIABILITY OF BONDSMEN. *Id.*

Insufficiency of Bond.

566. SEC. 8. Whenever any guardian's bond shall become insufficient by reason of the death, insolvency or removal from the state of any surety or sureties, it shall be the duty of the guardian to give further security, and he may be ordered by the court to do so within a given time, whenever the court shall be satisfied the bond has become insufficient. To this end, whenever the District Judge shall be satisfied that the matter requires investigation he shall direct the Clerk to issue a citation to the guardian, requiring him or her to appear at a given time and place, to be therein specified, to show cause why he or she should not give further security. Such citation shall be served personally on the guardian by the Sheriff or any other citizen of the United States over twenty-one years of age, at least five days before the return day thereof; *provided*, if the guardian shall have absconded, or cannot be found, it may be served by leaving a copy thereof at his or her last place of abode.

District Judge to Investigate.

567. SEC. 9. At the time designated, or at such other time as the Judge may appoint, he shall proceed, on proof of service of citation, to investigate the sufficiency of the bond of such guardian, and if satisfied that the security is from any cause insufficient, he may, by order, require the guardian to give further security or file a new bond within a reasonable time.

Neglect to Comply With Order.

568. SEC. 10. If the guardian shall neglect to comply with the order within the time prescribed, the Judge shall by order revoke his or her letters, and his or her authority shall thereupon cease.

When Citation Shall Issue.

569. SEC. 11. Any person may file a petition, under oath, for the removal of a guardian by reason of incapacity, or that the guardian is mismanaging or wasting the estate, or that the best interests of the ward require it, and upon filing such petition a citation shall issue and be served as provided in section eight of this Act, and until the same can be heard and determined the court or Judge may suspend the guardian, and on the hearing enter such judgment and order as the facts may warrant.

POWER OF COURT TO REVOKE LETTERS OF GUARDIANSHIP. *Deegan v. Deegan*, 22 Nev. 185.

Education and Maintenance.

570. SEC. 12. If any minor who has a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed, in whole or in part, out of the income of such property as shall be judged reasonable and directed by the district court; and the charges therefor shall be allowed the guardian of such minor in the settlement of his accounts.

Interest of Minor in Any Suit Not to Be Impaired.

571. SEC. 13. Nothing contained in this Act shall affect or impair the power of the court to appoint a guardian to defend the interest of any minor, in

any suit or matter pending therein, or to appoint or allow any person as the next friend of a minor to commence and prosecute any suit in behalf of a minor; nor impair the right of the father, or in case of his decease or divorce, the mother, of any minor child, to appoint by last will and testament, a guardian or guardians of such child, whether born before or after the time of making such will.

Petition to Be Filed in Relation to an Incompetent Person.

572. SEC. 14. Any relative or friend of any insane person, or of any person, who, by reason of extreme old age, or for any other cause, is mentally incompetent to manage his or her property, may present a petition, under oath, setting out the necessary facts, to the District Judge, praying that a guardian for the person and estate, or either, be appointed. Such Judge shall direct the Clerk to issue a citation, requiring such supposed insane or incompetent person to be and appear at a time and place to be therein specified to show cause why a guardian should not be appointed. Such citation shall be served as provided in section eight of this Act, on such person, and also on such person, with whom or in whose custody, such insane or incompetent may be, not less than five days before the return day thereof; and if able to attend, the Judge shall cause such insane or incompetent person to be produced before him on the hearing.

District Judge to Appoint.

573. SEC. 15. If, after a full hearing and examination upon such petition, it shall appear to the District Judge that the person in question is incapable of taking care of himself or herself, and managing his or her property, he shall appoint a guardian of the person and estate or either, of such person.

Power of Guardian.

574. SEC. 16. Every guardian appointed under the provisions of the preceding section shall have the care and custody of the person or estate of the ward, until such guardian shall be discharged according to law; and he shall give bond and qualify in like manner and with like conditions as hereinbefore prescribed with respect to the guardian of a minor.

Guardian to Pay Debts.

575. SEC. 17. Every guardian appointed under the provisions of this Act, whether for a minor or any other person, shall pay all just debts due from the ward out of the personal estate and the income from the real estate of the ward, if sufficient, and if not, then from the proceeds of a sale of the personal or real estate, upon obtaining an order for such sale according to law.

Management of Estate.

576. SEC. 18. Every guardian shall manage the estate of his or her ward frugally and without unreasonable waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance, support and education of the ward; and if such income and profits be insufficient for such purposes, the guardian may sell the personal or real estate upon obtaining an order therefor, as provided by law for such purpose. A guardian may join in and assent to a partition of the real estate of the ward in the cases and in the manner provided by law.

Guardian to Settle All Accounts.

577. SEC. 19. Every guardian shall settle all accounts of the ward, and demand, sue for and receive all and every debt or property due the ward; or may, with the consent of the District Judge, compound for the same and give a discharge to the debtors on receiving a fair and just dividend of his or her estate and effects; and he shall appear for and represent his ward in all legal proceedings, unless when another person shall be appointed for that purpose as guardian ad litem, or next friend.

Inventory to Be Returned.

578. SEC. 20. Every guardian shall return to the district court an inventory of the estate of his or her ward within twenty days after his or her qualification, and annually, or at such other times as the court may order, present to and have settled by said court his account as guardian, and shall return to said court additional inventories whenever any further property belonging to the ward not included in any previous inventory shall come to his hands or knowledge. If there be no estate he shall return that fact. The provisions of law regulating the settlement of the estates of deceased persons regarding inventories shall apply to the inventories herein required in all respects, except as to the time of filing.

Insufficiency of Income to Maintain.

579. SEC. 21. When the income of the estate of any person under guardianship shall not be sufficient to maintain the ward and his or her family, if any, or to educate his or her family, or the ward, if a minor, the guardian may sell the personal or real estate of the ward, or such portion as may be necessary for such purpose, upon obtaining an order therefor and proceeding therein as in this Act provided.

Sale of Realty for Benefit of Ward.

580. SEC. 22. Whenever it shall be made to appear that it would be for the benefit of the ward that his or her real estate, or some portion thereof, should be sold in order that the proceeds thereof may be put out at interest, or invested in some productive security, or in the improvement or security of other real estate of the ward, or to be reinvested in other real estate, the same may be sold as in this Act provided.

Proceeds of Sale to Apply.

581. SEC. 23. If the estate shall be sold for maintenance or education, the guardian shall apply the proceeds of the sale to such purposes, so far as necessary, and shall put out the residue, if any, at interest or invest it to the best advantage, under the direction of the court, until the capital may be required for the maintenance of the ward and his or her family, or the education of the family, if any, or for the education of the ward, if a minor, in which case the capital may be used as far as necessary for such purpose.

To the Best Advantage.

582. SEC. 24. If the estate be sold for the purpose of putting out the proceeds on interest, or investing, or reinvesting the same as in this Act provided, the guardian shall, with the approval of the District Judge, so dispose of such proceeds to the best advantage possible.

Petition for Order of Sale to Be Filed—Citation to Issue.

583. SEC. 25. To obtain an order for the sale of a ward's estate, or any part thereof, the guardian must file in the Clerk's office of the district court having jurisdiction, a petition therefor, setting forth the condition of the estate of the ward with the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, which petition shall be verified by the oath of the petitioner, whereupon the Clerk shall issue a citation to the next of kin to the ward, if any, in the county, and to all persons interested in the estate who may be in the county, to appear before the court at a time and place therein to be specified, not less than twenty days after the date of the citation, to show cause why an order for the sale of such estate should not be granted.

Upon Whom Served.

584. SEC. 26. The citation shall be served personally on the next of kin and all persons interested in the estate within the county at least ten days before the return day thereof, or, if thought advisable, the court instead may order the service of the citation to be made by the publication thereof, for fifteen days before

the return day, in some newspaper in the county, but if there be no newspaper in the county, then in such newspaper as the court or Judge may designate.

Hearing.

585. SEC. 27. At the time designated in the citation, or at such other time as the hearing may be adjourned to, upon proof of the due service or publication of the citation, the court shall proceed to hear the petition and any objections that may be made to such sale. Any person may object to an order being made to sell a ward's estate.

Witnesses May Be Compelled.

586. SEC. 28. On such hearing the guardian may be examined under oath and witnesses may be produced and examined by any party, and process to compel their attendance and testimony may issue as in other cases and with like effect.

In Case of Objection.

587. SEC. 29. If any person shall appear and object to the granting of the order prayed for, and it shall appear to the court that either the petition or the objection thereto is unreasonable, the court may in its discretion award costs to the party prevailing and enforce the payment thereof.

Order to Specify Manner of Sale.

588. SEC. 30. If, after a full examination, it shall appear to the court either that it is necessary or would be for the benefit of the ward, for any purpose mentioned in sections twenty-one and twenty-two of this Act, that his or her real estate or some part of it should be sold, such court may grant an order therefor, specifying therein whether necessary or proper and the object for which made. The order may also direct the sale to be at public auction or private sale upon like proceedings and in the manner as prescribed by law in case of the sale of real estate by an executor or administrator, and subject to the same proceedings in relation to the report, confirmation or rejection, of the sale, or the resale thereof.

Additional Bond to Be Given.

589. SEC. 31. Every guardian authorized to sell real estate as aforesaid, shall before the sale give an additional bond to the ward, in an amount to be fixed by the court or Judge, with sufficient security, to be approved by the Judge, and conditioned to sell the property as prescribed by law and to account for and dispose of the proceeds of the sale in the manner provided by law.

Proceeds of Sale, How Invested.

590. SEC. 32. The district court, on the application of a guardian, or of any other person interested in the welfare of the ward, after such notice to the next of kin and all persons interested therein as the Judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and also any other money in his hands, in real estate, or in any other manner as in this Act provided; and the district court may make such further orders and give such directions as the case may require for managing, investing and disposing of the estate and effects in the hands of the guardian.

Removal or Resignation of Guardian.

591. SEC. 33. Whenever any guardian, either testamentary or otherwise, appointed under this Act, shall become insane, remove from the state, or otherwise become incapable of discharging the trust, or evidently unsuitable therefor, or shall have wasted or mismanaged the estate, the District Judge, after notice served as hereinbefore provided for service of citation, may remove him or her; and every guardian may, upon request, be allowed to resign his or her trust, when it shall appear to the District Judge proper to allow the same, and proper accounts

have been settled and allowed. And upon every such resignation or removal, or upon the death of any guardian, the court or Judge may appoint another.

When Discharged.

592. SEC. 34. The guardian of any person may be discharged by the district court or Judge when upon the application of the ward or otherwise, it shall appear that such guardianship is no longer necessary.

When a New Bond Shall Be Required.

593. SEC. 35. The District Judge may require a new bond to be given by any guardian whenever he shall deem it necessary, and may discharge the existing sureties from further liability, after due notice given as such Judge may direct, when it shall appear that no injury can result therefrom to the estate, or any one interested therein.

Action in Behalf of the Ward.

594. SEC. 36. Every bond given by a guardian may be to one or more wards and shall be filed and preserved in the office of the Clerk of the district court of the county; and in case of the breach of any condition thereof, an action may be maintained therefor in behalf of the ward, or wards jointly, if all are interested, or of any person interested in the estate, and shall not be void on the first recovery; and if the action is in behalf of one ward on a bond given to more than one, the others mentioned in the bond need not be united in or made parties to such action.

Action Against Sureties to Be Commenced Within Three Years.

595. SEC. 37. No action shall be maintained against the sureties in any bond given by a guardian unless it be commenced in three years from the time when the guardian shall have been discharged; *provided*, if at the time of such discharge the person entitled to bring such action shall be under any legal disability to sue, the action may be brought at any time within three years after such disability shall be removed.

Fraud.

596. SEC. 38. Upon complaint made to the District Judge by any guardian, ward, creditor of, or any other person interested in the ward or his or her estate, against any one, charging such an one with having concealed, converted, having in possession or conveyed away any of the money, goods or effects of, or any instrument in writing belonging to the ward, the Judge may cause such person by citation to appear before him for examination, and proceed in the same manner as is provided with respect to persons suspected of concealing, converting or conveying away the effects of a deceased person.

Residence Out of this State.

597. SEC. 39. When any minor, or other person liable to be placed under guardianship, according to the provisions of this Act, shall reside out of this state, and shall have estate therein, any friend of such person, or anyone interested in his or her estate, in expectancy or otherwise, may apply to the district court of any county in which there may be any estate of such absent person in expectancy or otherwise for letters of guardianship of such estate, as in case of a resident ward, and the court may proceed in like manner and appoint a guardian.

Powers and Duties Alike.

598. SEC. 40. Every guardian appointed under the provisions of the preceding section shall have the same power and perform the same duties with respect to any estate of the ward that may be found within this state, and also with respect to the person of the ward if he or she shall come to reside therein, as are prescribed with respect to any other guardian appointed under this Act.

Guardian to Give Bond.

599. SEC. 41. Every such guardian shall give bond to the ward and qualify

in the same manner and with like conditions as hereinbefore provided with respect to other guardians, excepting that the provisions respecting the inventory, disposal of the estate and effects, and the accounts to be rendered by the guardian shall be confined to such estate and such effects as shall come to his hands in this state.

Whole Estate Included.

600. SEC. 42. The guardianship, which shall be first lawfully granted of the estate of any person residing without this state shall extend to all the estate of the ward within this state, and shall include the jurisdiction of every other district court.

Expenses Allowed.

601. SEC. 43. Every guardian shall be allowed his or her reasonable expenses incurred in the execution of his or her trust, and shall also have such other compensation for his or her services as the court in which the accounts are settled shall allow as just and reasonable.

602. SEC. 44. The court in its discretion may appoint more than one guardian of any person or estate subject to guardianship.

Joint Guardians.

603. SEC. 45. Joint guardians may unite in a bond to the ward or wards, or each may give a separate bond.

604. SEC. 46. When an account shall be rendered by two or more joint guardians, the district court or Judge may allow the same upon the oath of any one of them.

Sales of Realty, How Made.

605. SEC. 47. All sales of real estate of minor heirs, made in accordance with the provisions of this Act, shall be for cash or on credit, or part cash and part on credit, as in the discretion of the court or Judge may be most beneficial for such heirs. When credit is given, the court or Judge shall fix the credit, and the purchaser or purchasers shall execute and deliver to the guardian or guardians promissory notes for deferred payments, bearing interest and secured by mortgage on the real estate sold, with such additional security as the Judge may deem necessary and sufficient to secure the payment of the deferred payments and the interest thereon.

Fees of Clerk.

606. SEC. 48. The total fees and charges of the Clerk where any estate in guardianship shall not exceed in value two thousand dollars, shall not exceed fifteen dollars.

Acts Repealed.

607. SEC. 49. An Act entitled "An Act to provide for the appointment and prescribe the duties of guardians," approved November 29, 1861 [p. 255], and all Acts and parts of Acts amendatory thereof, or supplementary thereto, are hereby repealed, saving the rights in matters of guardianship pending at the date of the approval of this Act to proceed with and close up such guardianship under the law existing at the institution of such proceedings.

An Act to provide for the adoption of children.

Approved February 20, 1885, 29.

Conditions for Adopting Minor Children.

608. SECTION 1. Any minor child may be adopted by any adult person or by any husband and wife, in the cases and subject to the provisions prescribed

in this Act. The person or persons adopting a child must be at least ten years older than the child adopted; *provided*, that in the case of a husband and wife adopting a child, if only one of them shall be ten years older than the child, it shall be sufficient.

Obtaining Necessary Consent.

609. SEC. 2. The person or persons adopting a child, and the child adopted, and the other persons, if known, if within or residents of this state, whose consent is necessary, must appear before the District Judge of the county where the person or persons adopting reside, and the necessary consent must thereupon be signed and an agreement be executed by the person or persons adopting, to the effect that the child shall be adopted and treated in all respects as his, or her, or their own lawful child should be treated, including the rights of support, protection and inheritance.

Unlawfully Separated Married Persons Shall Not Adopt.

610. SEC. 3. A married man, not lawfully separated from his wife, or a married woman, not thus separated from her husband, cannot adopt a child without the consent of the other spouse; *provided*, the husband or wife not consenting is capable of giving such consent.

Illegitimate Children.

611. SEC. 4. A legitimate child cannot be adopted without the consent of its parents, if they be living and known, nor an illegitimate child without the consent of its mother, if she be living and known, and not without the consent of the father of such illegitimate child also, if he be living and known, and if he shall have adopted such illegitimate child as his own, by the acts and in the manner prescribed by section eight [nine] of this Act; *provided*, that such consent shall not be necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or cruelty, abandonment, or for either of said causes, divorced, or adjudged to be a habitual drunkard, or has been judicially deprived of the custody of the child on account of adultery, drunkenness, cruelty or neglect; *and*, *provided further*, that no child over the age of twelve years shall be adopted without his or her own consent in writing.

Rights of Adopted Child.

612. SEC. 5. The Judge must examine, under oath, all persons appearing before him under the provisions of this Act, and if satisfied that the interest of the child will be promoted by the adoption, he shall make an order declaring that the child shall henceforth be regarded and treated in all respects as, and have all rights, including the right of support, and of protection, and of inheritance, of a lawful child of the person or persons so adopting the child.

May Take Name of Adopting Party.

613. SEC. 6. A child, when adopted, may take the family name of the person or persons adopting, and after adoption the persons adopting, and the child, shall sustain towards each other the legal relation of parent and child, and have all the rights, including the rights of support, maintenance, protection, and inheritance, and be subject to all of the duties of that relation; and the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibilities for, the child so adopted, and have no rights over it.

If Abandonment of Child Be Shown, Consent Not Necessary.

614. SEC. 7. If the persons whose consent is necessary to the adoption of the child are not within this state, their consent, in writing, if they be known and their whereabouts can be ascertained, must be obtained and filed with the Judge, duly executed and acknowledged, in like manner as conveyances of real estate are required to be executed and acknowledged; *provided*, that if the Judge shall

find that the person or persons whose consent is required have abandoned such child, or if such persons are unknown, or their whereabouts cannot be ascertained, then in that case the Judge may, in his discretion, proceed to make the order of adoption without such consent; but in that case it shall be the duty of the Judge to cause to appear before him, by citation or otherwise, the persons in whose custody the child is, and may also bring before him, in his discretion, such of the next friends of the child as he may deem proper, and shall examine them under oath, and if he deem it for the best interests of the child, he shall make the order of adoption.

Record of Adoption Legal Notice.

615. SEC. 8. The District Judge shall file in the office of the County Clerk all papers presented before him, or copies thereof, in the matter of the adoption of any child, and shall cause the order of adoption to be entered in the minutes of the district court of the county where the proceeding is had, and a certified copy of such minute entry to be filed and recorded in the office of the County Recorder of said county, and such records shall be notice to the world of such adoption of the child.

An Illegitimate Child Acknowledged by Father Becomes Legitimate from Its Birth.

616. SEC. 9. The father of an illegitimate child, by publicly acknowledging it as his own, or receiving it as such, with the consent of his wife, if he is married, into his family, or otherwise treating it as his legitimate child, thereby adopts it as such; and such child shall, thereupon and thenceforth, be deemed, for all purposes, legitimate from the time of its birth. The provisions of the foregoing sections of this Act do not apply to such an adoption, except as specified in section four of this Act.

Shall Not Apply to Mongolians.

617. SEC. 10. The provisions of this Act shall not apply to any Mongolian, either as the adopting or adopted party.

An Act to provide support for illegitimate children, and other matters relating thereto.

Approved March 1, 1883, 98.

Paternity, How Established—Complaint.

618. SECTION 1. Under this Act the paternity of any illegitimate child shall be established by mutual agreement of the mother and any person whose relations have been sufficiently intimate with her to warrant the conclusion. It may also be established by the confession or admission of the father, when not denied by the mother; and when not so established it shall be susceptible of proof in such manner and of such character as the court before whom an action for that purpose is brought may determine. The mother of the child shall be admitted as a witness in support of the complaint, and may be compelled to testify. No complaint shall be withdrawn, dismissed, or settled by agreement of the mother and putative father.

Parent Guilty of Misdemeanor, When—Punishment—Custody of Child.

619. SEC. 2. The parent of any illegitimate child who abandons, refuses, or neglects to support such child shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty (\$50) dollars, nor more than three hundred (\$300) dollars, and in default of the payment of such fine, shall be imprisoned in the county jail until such fine shall be paid, at the rate of two dollars per day for the term of such imprisonment. The court may also adjudge that the putative father stands charged with the maintenance of said child, with the assistance of the mother; but nothing in this Act shall be so construed as to take from the mother the custody of her child. Whenever the court shall make such order,

any refusal or neglect of said putative father to comply with the order of the court shall be deemed a contempt of court, and punished as other cases are for contempt.

An Act concerning apprentices.

Approved March 8, 1879, 83.

Minors May Be Bound as Apprentices.

620. SECTION 1. Any male person under the age of eighteen years, or any female person under the age of fifteen years, may be bound until they arrive at those ages respectively, or for any shorter period, to serve as a business clerk, or as an apprentice to any mechanic's trade, or business of skilled labor in manner herein provided.

Orphans and Other Children May Be Bound by County Commissioners.

621. SEC. 2. The Boards of County Commissioners in the several counties in this state are hereby empowered to bind out any orphan (not otherwise provided for by law) or any destitute child, or the child of any person who shall not provide for the support and tuition of such child.

Indenture or Covenant, How and by Whom Signed.

622. SEC. 3. The indenture or covenant for a term of apprenticeship or service shall be signed and sealed by the father, or, in case of death or inability of the father, shall be signed and sealed by the mother or guardian, or in case of an orphan or destitute child, by the District Judge of the district in which such orphan or destitute child resides, of the one part, and by the master, mistress, or guardian, of the other part.

Form of Indenture and Covenants.

623. SEC. 4. The indenture or covenant for apprenticeship or service, shall contain a statement of the age and time of service of the minor, and if such age shall be unknown, then it shall be inserted according to the best information obtainable, which age shall, in relation to the term of apprenticeship or service, be deemed and taken as the true age of such minor.

Children to Be Taught—Clothing, etc.

624. SEC. 5. The indenture or covenant by which any minor may be bound shall contain, in case of a female, bound to serve for four years or more, a covenant on the part of the master or mistress to teach, or cause such female minor to be taught, to read and write the English language, and also the first four rules of arithmetic; and in all cases the master or mistress shall covenant to furnish such female minor with an ample supply of decent clothing, and wholesome food, and at the expiration of the term of service to furnish the said minor with two full suits of female wearing apparel, and fifty dollars in money.

Duties of Master or Mistress—Teaching—Food and Clothes.

625. SEC. 6. In case of a male minor being bound to serve five years or more, the master or mistress shall covenant to teach, or cause such minor to be taught to read and write the language, the rules and principles of common English grammar, and so much of arithmetic as will include the single rule of three. And in all cases to furnish such male minor with substantial food and decent wearing apparel; and, also, at the expiration of the term of service, to furnish the said minor at least two suits of common clothing, each suit being of the value of not less than twenty-five dollars, and the sum of one hundred dollars in money, and the said master or mistress shall further covenant that all money or property stipulated to be delivered or paid by the master or mistress shall be secured to and for the sole use and benefit of the minor.

Record of Covenant, etc.

626. SEC. 7. It shall be the duty of the master or mistress to cause the indenture or covenant of service to be recorded within thirty days from the execution thereof, by the Recorder of the county in which the master or mistress resides, and on failure so to do the said minor shall be discharged from his or her service or apprenticeship, and the master or mistress shall remain liable for the payment of all property stipulated to be paid by his or her covenant.

County Recorder to Record All Covenants, etc.—Certified Copies—Fees of Recorder and How Paid—Penalty of the Recorder.

627. SEC. 8. It shall be the duty of the County Recorder to record all indentures or covenants of service or apprenticeship, in a book to be by him provided for that purpose, and he shall indorse the date of the receipt and the time of recording the same, and shall furnish certified copies of the same when required, for which service he shall be entitled to such fees as are provided by law for such labor, the same to be paid by the person or persons requiring such certified copy; and a certified copy of the indentures shall be prima facie evidence of the existence and stipulations of said indenture; and any County Recorder who shall neglect or refuse to comply with the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor exceeding five hundred dollars.

County Commissioners' Duties—Cruelties, etc.—Complaints—Summons.

628. SEC. 9. It shall be the duty of the County Commissioners, in the county where any minor is bound, as provided in this Act, to inquire as often as once in every three months into the usage of any minor bound as aforesaid, and to defend such minor or child from the cruelty, neglect, or breach of covenant of the master or mistress, or any parent, guardian or trustee, or friend of any such male or female minor bound as aforesaid, as well as the Board of County Commissioners, may enter complaint against such master or mistress before any Justice of the Peace, in the county where any such master or mistress resides, and such Justice of the Peace shall summon such master or mistress forthwith to appear before him, and if he can reconcile the parties to each other he shall make such order therein as the equity and justice of the case may require.

Jury to Be Summoned—In Case of Breach of Contract.

629. SEC. 10. If said Justice of the Peace shall be unable to settle and adjust the difference in dispute between the parties, he shall issue a venire to any Constable of the township to summon five disinterested citizens, to be therein named, to meet at a time and place certain, not to exceed three days thereafter, and the five jurors, or such other persons as the Justice may appoint, in case of their failure to attend, when met and qualified, shall proceed to hear the evidence in the case, and if they find such master or mistress guilty of a breach of his or her indenture or covenant, or neglect or refusal to furnish necessary food or clothing, or of cruelty towards such minor, they shall render their verdict in writing accordingly, and shall assess the damages such minor or child may have sustained.

Verdict and Judgment—Costs.

630. SEC. 11. Whereupon the Justice shall enter the verdict in his docket, and shall render judgment thereon for the damages so found by the jury, and costs against said master or mistress, and award execution accordingly; and the indenture or covenant of service shall be void from the rendition of judgment; but if the jury shall find the defendant not guilty, the Justice shall render judgment for costs against the parent, guardian, trustee, friend or other party or parties who have made the complaint (when such complaint has been made without probable cause), as the case may be, and shall issue execution accordingly.

Bad Conduct of Child—Costs Not Payable by County.

631. SEC. 12. When the conduct and habits of the minor apprentice, clerk or servant shall become immoral and dissolute, and when such minor shall act in disregard of the reasonable commands of his or her master or mistress, when the authority of such master or mistress shall be exerted for his or her reformation without effect, the master or mistress may complain to any Justice of the Peace in the county, who shall give notice to the Board of County Commissioners, and to the parent, guardian, trustee or friend of such minor; as the case may be, and such proceeding shall be had as to summoning and impaneling a jury, provided in section ten of this Act; and if upon such investigation the said jury shall be of opinion that said master or mistress should be discharged from his or her covenants, they shall certify the same in writing to said Justice, who shall enter the same upon his docket, and thereupon the said indenture shall be void. But no judgment for costs shall be entered against any Board of County Commissioners, nor against any parent, guardian, trustee or friend of said minor, but the said costs (except for the witnesses for the minor) shall be paid by the master or mistress.

Fees of Witnesses and Jurors, and How Paid.

632. SEC. 13. The jurors and witnesses summoned and attending under the provisions of this Act shall be allowed two dollars per day, and the Justices and Constables such compensation as is allowed by law for a similar services.

Penalties of Persons Aiding Runaways.

633. SEC. 14. Every person who shall counsel, persuade, entice, aid or assist any minor or apprentice, clerk or servant, as provided for in this Act, to run away, or absent himself or herself from the service of his or her master or mistress, shall forfeit and pay a sum not exceeding two hundred dollars, to be sued for and recovered by action of debt, with costs, by such master or mistress, before any Justice of the Peace having jurisdiction thereof.

Penalties for Concealing Runaways.

634. SEC. 15. Every person who shall harbor or conceal any minor apprentice, clerk or servant, as provided in this Act, knowing such apprentice, clerk or servant to have run away, shall forfeit and pay to such master or mistress a sum not to exceed two hundred dollars, damages to be recovered in an action on the case before any court having competent jurisdiction thereof.

Relative to Liability of Guardians.

635. SEC. 16. No Board of County Commissioners, nor any parent, guardian, trustee or friend of any minor or apprentice, clerk or servant, provided for by this Act, shall be liable, upon any covenant contained in any indenture or covenant of service, unless the same shall contain an express covenant therein that the said Commissioners, parent, guardian, trustee or friend of such minor is made individually liable.

STATE MILITIA.

An Act to provide for organizing and disciplining the militia of the state.

Approved March 4, 1865, 189.

SECTIONS 1 to 9, 12, 16 to 20, 22, 29 to 45, 53, 55, 72 and 75 are repealed, Stats. 1893, 100.

Governor to Appoint Adjutant-General, When.

636. SEC. 10. During the suspension of the Adjutant-General from office, or his absence, or inability, from any cause to perform his duties, the Governor may

appoint some competent person to perform the duties of Adjutant-General ad interim.

State Property.

637. SEC. 11. On the expiration of his term of office, the Adjutant-General, or the person performing his duties ad interim, will turn over to his successor, in good order, all arms, ordnance, ordnance stores and other property belonging to the state, and all the books, papers, bonds, and money in his charge, and pertaining to his office.

Who Exempt.

638. SEC. 13. The following persons are exempted from military duty and enrollment: All ministers of religion, having a license or written evidence, according to the rules of their particular persuasion or organization, that they are such ministers; all civil and military officers of the United States; all officers of foreign governments; all civil officers (including members of the legislature) of the State of Nevada; all persons who have been wounded in the service of the state, or of the United States, and all persons exempted from military duty by the laws of the United States.

SECS. 14 and 15 repealed, Stats. 1879, 66.

Application for Arms—Bonds.

639. SEC. 21. When any volunteer company shall be organized according to law, the commanding officer thereof may apply to the Commander-in-Chief, through the proper military authorities, for such arms and accoutrements, or stores, as may be required, such application being first submitted to the District Judge, and receiving his approval, which shall be indorsed thereon. If the Commander-in-Chief shall approve such application, or any part thereof, he shall give an order, upon the back thereof, directing the issue by the Adjutant-General, who shall immediately notify the officer making such application, and the District Judge who approved it, that the arms and accoutrements, or stores, mentioned in such application, or any portion thereof, are ready for issue; and thereupon it shall be the duty of such officer to give such bonds and security as may be deemed requisite by the District Judge to secure the county from loss on account of use, or misapplication, of such arms or equipments, or other stores; and on due notification from such District Judge that such bonds have been given to his satisfaction, and upon receiving triplicate receipts from such officer, the Adjutant-General shall make the issue. He shall file one copy of such receipts in his office, and transmit the other two, one to the Controller of State, and the other to the County Clerk of the county to which such volunteer company belongs.

Arms to Be Returned.

640. SEC. 23. The Commander-in-Chief shall have authority to demand and receive back from any county, or from any portion of the military force of this state, any arms, equipments, military stores, or other property, belonging to the state, which may be in possession of any such counties or military force; and when such arms, equipments, military stores, or other property, shall again come into the possession of the Adjutant-General, or other officer designated by the Governor to receive them from such counties, or military forces, to which they have been issued, as above provided, it shall be the duty of the Adjutant-General, or officer so appointed, to receipt for the same, which receipt shall be triplicate, one copy to be filed in the office of the County Clerk, one in the office of the Adjutant-General, and the third in the office of the Controller of State.

Arms Subject to Inspection.

640†. SEC. 24. All arms, equipments, and military stores, issued as herein-before provided, shall at all times be subject to examination by the inspectors and ordnance officers of the state, and of any other officer designated by the

Commander-in-Chief for that purpose; and if such officer shall find any of such public property out of repair, injured, or defective, he shall immediately notify the Board of County Commissioners of the facts, and report the same, through the proper channels to the Commander-in-Chief, who, if the damage shall not be repaired, and the defects or losses supplied within a reasonable time, shall order the same to be done under the direction of some officer, and the vouchers for the expense thereof shall be duly examined and audited by the State Board of Military Auditors, and paid, on the draft of the Controller of State, out of the military fund.

Controller to Charge Property.

641. SEC. 25. It shall be the duty of the Controller of State to charge the value of all arms, equipments, and military stores, issued as above provided, to the counties, to the military companies, in which such public property, shall be issued; and all expenses of repairs of damage and defects, as provided in the foregoing section, and double the value of any arms, accoutrements, and military property, which such counties, or such military companies, shall have failed to return to the state, on the demand of the Governor. At the close of each fiscal year, he shall settle the account of each county with reference to such issues and military charges, and the amount so found due shall, on the requisition of the Controller of State, be assessed at the time of the next annual assessment as a part of the county taxes, and be collected in such county in the same manner as the ordinary taxes, and shall be paid into the state treasury as a part of the military fund of the state.

Transportation of Arms.

642. SEC. 26. The transportation of all arms, equipments and military stores, issued to troops, or received by the state, under the provisions of this Act, shall be contracted for, under the direction of the Commander-in-Chief, by the Adjutant-General, and the vouchers for such transportation, when audited by the State Board of Military Auditors, shall be paid from the military fund, on the warrant of the Controller.

When Arms to Be Issued.

643. SEC. 27. No public arms, equipments, or military stores of any kind, shall hereafter be issued to any person not a member of the organized volunteer militia, or of the enrolled militia called into active service, except in time of war, insurrection, or public danger so imminent that the Commander-in-Chief shall consider that the public safety requires him to make such issue; in which case an accurate account shall be taken of such issues, and to whom they are made.

Bonds of Officers—Penalty for Using State Arms.

644. SEC. 28. Within ninety days from the passage of this Act, each and every officer of volunteer companies now organized, having in his possession any arms, equipments, and military stores belonging to the state, shall give to the county in which he resides good and sufficient bonds, to be approved by the District Judge, to secure the county from loss on account of the use or misapplication of the same, and the officer so giving bonds to the county shall, together with his sureties, be released from his liabilities for the same property on any bond heretofore given by him and them to the state, and the same shall be charged, as hereinbefore directed, to the said county; and after the expiration of the said ninety days, no person shall retain, or have in his possession at any time any arms, equipments, or military stores of any kind, belonging to the state, unless they have been properly issued to such person in pursuance of law, and he shall be permitted, by proper authority, to retain the same in the discharge of a public duty; and no person shall use any public arms, equipments, or military stores belonging to the state, for his private use, under penalty, in either of the above cases, of not less than five nor over fifty dollars, for each offense, to be

recovered; in case of a member of the organized militia, or of the enrolled militia in active service, by sentence of a court-martial; or, in case of any other person, by suit, in the name of the State of Nevada, by the District or Prosecuting Attorney of the county, before any court of competent jurisdiction; and the money so recovered shall be paid into the treasury as a part of the military fund of the state.

Courts-Martial.

645. SEC. 46. The Commander-in-Chief will appoint courts-martial for the trial of general officers and all officers of the staff of the Commander-in-Chief; the Major-Generals of Division will appoint courts-martial for the trial of all staff officers of their divisions and brigades, and for the field and staff officers of battalions and regiments of their respective divisions, and Brigadier-Generals will appoint courts-martial for the trial of all Captains and commissioned officers under that rank, in their respective brigades; the commanding officers of regiments and battalions will appoint courts-martial for the trial of all non-commissioned officers, musicians, artificers, and privates, of their respective regiments and battalions. The commanding officer of a single company, not forming a part of any battalion or regiment, shall have power to appoint courts-martial the same as the commanding officer of a regiment or battalion. The officer appointing a court-martial will revise the proceedings and approve or disapprove the sentences of such courts-martial and will direct the execution of such sentences, or mitigate the punishment, or pardon the person or persons convicted; but the person or persons so sentenced may apply to the Commander-in-Chief to revise the proceedings and to disapprove them, or pardon the offense; in which case, the officer approving the sentence will transmit the proceedings in such case to the Commander-in-Chief, and the execution of the sentence shall be suspended until the proceedings shall be returned, with the decision thereon. Courts-martial appointed under the provisions of this Act shall be organized in like manner and be subject to the rules and regulations governing courts-martial in the United States Army; they shall have the same power to compel the attendance of witnesses, when duly summoned by the Judge Advocate, to preserve order in and about the court room, during their session, and to punish contempts, as the Judges of the district courts have under the laws of this state.

Removal or Absence from State.

646. SEC. 47. Any commissioned officer of a brigade or division, who shall remove his residence from the limits of his brigade or division, will be deemed to have resigned his commission, and any Major-General or Brigadier-General who shall absent himself from the state for more than three months, without the permission of the Commander-in-Chief shall be deemed to have resigned his office.

Pay of Militia.

647. SEC. 48. Whenever any of the militia of this state shall be called into active service for the space of more than one week, they shall receive the same pay and allowance as United States troops serving in Nevada. Any General or field officer being called into active service, such call shall be deemed to include all the officers of their respective staff. In case a division, or part of a division, is called into active service, the Commander-in-Chief shall be authorized to put upon active service one of his Aids-de-Camp, and in case more than one division shall be called into active service, one more Aid for each additional division which shall be so called into active service.

Return of Arms.

648. SEC. 49. When the Commander-in-Chief shall order the return to the state of any arms, equipments, military stores, or other military property, belonging to the state, such arms and military property shall be immediately delivered to the officer authorized in such order to receive it, he receipting for the same, and

describing their condition in such receipts; and if the property mentioned in such order shall not be promptly delivered as directed, the officer named in such order is hereby authorized to take immediate possession of the same in the name of the State of Nevada; and any person resisting such officer in the performance of his duty, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not more than six months in the county jail, and shall be subject to a fine not exceeding five hundred dollars, to be recovered by an action brought by the District or Prosecuting Attorney, in the name of the State of Nevada, and be paid into the treasury as a part of the military fund.

Military Auditors.

649. SEC. 50. The Commander-in-Chief, Adjutant-General, and the Controller of State shall constitute a State Board of Military Auditors. The Commander-in-Chief shall be President, and the Adjutant-General shall be Secretary of said board.

Seal.

650. SEC. 51. The Board of Military Auditors shall have a seal, an impression of which shall be deposited by the Secretary of the Board in the office of the State Treasurer, and be attached to all orders drawn upon the general or military fund.

How Money to Be Drawn.

651. SEC. 52. No money shall be paid out of the general or military fund of this state, by the State Treasurer, upon the order of the Board of Military Auditors, except as provided in the foregoing section of this Act; said order shall specify on its face the objects for which such money is paid, and to whom, and the amount duly entered in a book to be kept by the Secretary of said Board of Military Auditors.

Secretary of State to Keep Blank Commissions.

652. SEC. 54. The Secretary of State shall, under the direction of the Governor, prepare and keep in his charge all blank military commissions. He will issue, from time to time, to the Adjutant-General, such blank commissions as he may require for use, charging him with the same.

Divisions and Brigades.

653. SEC. 56. The organized and enrolled militia of this state shall be divided into such number of divisions and brigades as the Commander-in-Chief shall determine. The Governor, as Commander-in-Chief, shall publicly announce the number of divisions and brigades within sixty days after the passage of this Act.

Civil Officers in Certain Cases May Control Troops—Proviso.

654. SEC. 57. Whenever any portion of the organized or enrolled militia shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of this state, or of the United States, it shall be competent for the Commander-in-Chief, or the General acting in his place, as provided in section thirty-nine, to place such troops under the temporary direction of the Mayor of any city, or Chairman of the Board of County Commissioners of any county, or of any Sheriff of any county, or of any Marshal of the United States, and if, in the opinion of such civil officer, it shall become necessary that the troops so called out shall fire or charge upon a mob or body of persons assembled to break or resist the laws, such civil officer shall give a written order to that effect to the superior officer present in the command, who will at once proceed to carry out the order, and shall direct the firing and attack to cease only when such mob or unlawful assembly shall have been dispersed, or when ordered to do so by the proper civil authority. No officer, who has been called out to sustain the civil authorities, shall under any pretense or in compliance with an order, fire blank cartridge upon a mob or unlawful assemblage,

under penalty of being cashiered by sentence of a court-martial; *provided*, that nothing in this section shall be construed as prohibiting any such troops from firing or charging upon such mob or assembly without the orders of such civil officers in case they shall first be attacked or fired upon, or forcibly resisted in the discharge of their duty. When the Commander-in-Chief, or General acting in his place, shall call troops into active service for the purposes mentioned in this section, and shall not place them under the temporary direction of any civil officer, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assemblage.

Collection of Fines.

655. SEC. 58. All fines legally imposed by a court-martial lawfully constituted after the proceedings and findings of said court in the premises have been approved as prescribed by this Act, shall be and the same are hereby made collectible by law; and any person failing to pay the same shall be proceeded against by the District or Prosecuting Attorney, in the name of the State of Nevada, as for ordinary debts, in any court of competent jurisdiction of the county; and a copy of so much of the finding and approval as relates to the imposition and approval of such fine, certified by the officer authorized by law to approve the same, shall be received as evidence in the case; and if judgment be obtained, it shall be collected as in ordinary cases, and shall be paid into the county treasury as belonging to the military fund of the state, and to be accounted for as such.

To Publish Rules.

656. SEC. 59. The Commander-in-Chief may, from time to time, make out and publish rules, regulations, and orders for the government of the militia of this state, in accordance with the provisions and spirit of this Act.

To Adopt Name.

657. SEC. 60. Any volunteer company may, on its organization, or thereafter, adopt a distinctive name, but shall be known by a particular letter or number in the battalion or regiment to which it belongs.

Must Belong to One Company.

658. SEC. 61. No person shall be a member of two companies at the same time, and any member of a company who removes beyond the limits of the county, shall be considered as having been discharged from such company.

Minors.

659. SEC. 62. In the cases of military taxes and fines, assessed and charged against a minor, the parent or guardian shall be held to pay. In case of minors who are orphans, the Commander-in-Chief shall have power to remit any military taxes or fines.

Absence of Officers.

660. SEC. 63. In the absence of any appropriate commander, the next in rank in the command of troops, where not otherwise provided in this Act, shall succeed to his authority.

Authority of Officers.

661. SEC. 64. Every senior, in his appropriate command, shall have authority to control the actions of his junior, in accordance with the principles of military subordination under the laws and usages that govern the United States Army.

Cashiered Officers.

662. SEC. 65. Any officer cashiered by sentence of a court-martial, shall be precluded thereby from holding any commission in the military service of the state, except the sentence be remitted by the Commander-in-Chief.

Dismissed from Service.

663. SEC. 66. No non-commissioned officer, artificer, musician, or private, expelled from his company, or dismissed from service, for any disgraceful cause, shall be permitted to again enter any volunteer company, except the offense be pardoned by the Commander-in-Chief.

Granting Discharges.

664. SEC. 67. No officer, inferior in grade to a regimental or battalion commander, shall have power to grant discharges to non-commissioned officers, artificers, musicians, or privates, in active service; but commanders of companies of the organized militia, when not in active service, may issue certificates of service and discharges. All discharges shall be in writing, and shall set forth fully the cause of discharge, and shall be signed by the officer granting the same.

Resignation—Election—Proviso.

665. SEC. 68. Any officer resigning his commission, shall do so in writing, and transmit the same through his immediate commanding officer, who will make his endorsements thereon; and the resignation shall go into effect when accepted by the Commander-in-Chief, and not before. Vacancies of commissioned officers of organized companies and battalions (not in active service) caused by resignation, death, dismissals or removals, or by the expiration of the term fixed by the rules and regulation of such company or battalion, or by any other cause, shall be filled by election, in accordance with the provisions of this Act. Such elections of company officers shall be presided over by an officer appointed for that purpose by the Brigadier-General, and of field officers, by an officer appointed by the Major-General; and such presiding officer shall report the result of such election to the officer appointing him, which report shall be transmitted to the Commander-in-Chief, who shall issue commissions in accordance therewith; *provided, however*, that when the same officer shall be elected no new commission shall be issued, but the officer so reelected shall continue to hold under his original commission.

Commissions Vacated.

666. SEC. 69. The commission of any staff officer whose term of office depends upon the pleasure of the officer by whom he is appointed, shall, when such officer is not in active service, be considered as vacated upon the qualification of his successor, and shall be so noted upon the proper books, or rolls, kept in the office of the Adjutant-General of the state.

May Disband Any Portion of the Militia.

667. SEC. 70. The Commander-in-Chief is authorized at any time, by issuing his orders to that effect, to disband any portion of the organized volunteer forces, or of the enrolled militia mustered into service, which may evince a mutinous, disorderly, or disobedient spirit, and to deprive them of arms; a copy of which order shall be transmitted to the Clerk of the district court or courts of the county or counties in which such force was raised; after which it shall be a misdemeanor in any person so disbanded, to appear with state arms in his possession, or as any portion of the organized volunteer militia, or of the enrolled militia, in active service, until again drafted or regularly mustered into service, under the penalty of not less than ten nor more than one hundred dollars for each offense; and such person shall be proceeded against by the District or Prosecuting Attorney in the name of the State of Nevada, before any competent court of the county where such person may happen to be; and all fines so recovered or collected shall be paid into the treasury as a part of the military funds.

Uniform.

668. SEC. 71. Every company, battalion, or regiment of organized militia of this state may adopt a uniform for itself, subject, however, to the approval of the

Commander-in-Chief, on inspection and report by the proper officer. *As amended, Stats. 1867, 105; 1871, 108.*

Tactics.

669. SEC. 73. The systems of instruction in tactics, prescribed for the different arms and corps in the United States Army, shall be followed in the military instruction and practice of the militia of this state, and the use of any other system is forbidden.

To Furnish County Clerk With List of Members.

670. SEC. 74. The commanding officer of every organized company shall, during the months of June and December of each year, furnish the County Clerk of his county with a list of the names of the *bona fide* members of his company, who attend regularly to appropriate duty. He shall, also, at the end of each year's service of any member of his company, who has performed duty in accordance with the regulations and by-laws of such company, during the year, issue to such member a certificate to that effect; and if such commander of a company shall make a false list of the members of his company, who have done duty as aforesaid, or a false certificate of service, he shall, on conviction by a court-martial, be cashiered from service, and shall, moreover, be subject to a fine of not less than fifty nor over five hundred dollars, to be sued for and recovered in the name of the State of Nevada, by the District or Prosecuting Attorney of the county of his residence, in any court of competent jurisdiction, and be paid into the treasury as a part of the military fund of the state.

Bands of Music.

671. SEC. 76. When bands of music shall not have been organized for any regiment, battalion, or isolated company, in the manner provided in the regulations of the Army of the United States, it shall be lawful for such regiment, battalion, or isolated company, through its commanding officer, to hire the services of any band of musicians, at their own expense, or if on duty for the state, at the state's expense; and the persons so employed shall, during the time of their engagement, be subject to the same laws and regulations that govern the military body with which they may serve.

Drafting for Service.

672. SEC. 77. When any person drafted for service shall offer, at or after the time of rendezvous, a suitable substitute, of the age of twenty-one years, and such substitute shall consent in writing to subject himself to all the duties, fines, forfeitures, and punishments to which his principal would have been subject had he personally served, he shall be accepted by the officer making such draft; and the same rule shall apply to substitutes offered by members of organized volunteer companies called into active service, the commanding officer of such company being the judge of the suitability of the substitute offered; and the person whose substitute shall be so accepted shall be exempted from draft during the term of service of his substitute.

Members of Courts-Martial Exempt.

673. SEC. 78. No action shall be maintained against any member of a court-martial, or officer, or agent acting under his authority, on account of the imposition of a fine or the execution of a sentence on a person not liable to military duty, if such person shall have been duly summoned and shall have neglected to appear and show his exemption before the court.

Courts of Inquiry.

674. SEC. 79. Courts of inquiry may be ordered by the Commander-in-Chief, or by any Major-General or Brigadier-General; such courts of inquiry shall be governed by the same rules as similar courts in the United States Army, and they shall have the same power to preserve order, punish contempts, and compel the attendance of witnesses as courts-martial have.

Fees.

675. SEC. 80. For all services under this Act, Sheriffs, Constables, and Jailers shall receive like fees as for similar services in other cases, and shall be subject to the same penalties for any neglect of duty.

Seal of Adjutant-General.

676. SEC. 81. The Adjutant-General shall have a seal of office, to be approved by the Commander-in-Chief, and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be in evidence in all cases in like manner as if the originals were produced.

Hours of Military Duty.

677. SEC. 82. On the days of military parade, appointed by the Commander-in-Chief, the militia so called out and doing military duty shall be considered to be under military discipline from the rising to the setting of the sun; and no officer, non-commissioned officer, musician, artificer, or private, belonging to the same during the time aforesaid, shall be subject to be arrested on any civil process.

Not to Obstruct Highways.

678. SEC. 83. The commanding officer of any parade, review, or drill, and the officer in charge of any rendezvous, may cause the grounds selected for that purpose to be marked or designated in such a manner as not to obstruct the passage of travelers on any public highway; and if any person during the occupation of such ground for such military purpose shall encroach upon such bounds, and enter upon such ground, without the permission of such officer commanding or in charge, he may be put and kept under guard by the order of such commander, until the setting of the sun of the same day, and, moreover, shall be subject to arrest and punishment by any court of competent jurisdiction for a breach of the peace.

Penalty for Insulting Officer or Soldier.

679. SEC. 84. If any person shall intercept, molest or insult, by abusive words or behavior, any officer, non-commissioned officer, or soldier, while in the performance of his military duty, he shall be immediately put under guard, and kept at the discretion of the commanding officer of the forces engaged in the performance of such military duty, until the setting of the sun of the same day on which the offense shall have been committed; and, moreover, shall be subject to arrest and punishment by any court of competent jurisdiction for a breach of the peace.

Disobeying Orders.

680. SEC. 85. Any officer, non-commissioned officer, or soldier, on military duty, who shall disobey the legal orders of his superior, use any reproachful or abusive language to his superior, or misbehave or demean himself in an unofficer or unsoldierlike manner, shall be immediately arrested if an officer, and if a non-commissioned officer or soldier, shall be disarmed and put under guard, and shall be tried and punished by a court-martial, according to law and military usage.

To Organize Temporarily.

681. SEC. 86. In case of parades, reviews, inspections, or musters, of the troops of any brigade, any companies not organized into battalions shall be temporarily organized into a battalion for the duties of the day; and the battalion so temporarily organized shall be commanded by the officer senior in rank of the companies composing it. It shall be optional with any such unattached companies to attach themselves for the day to any organized battalion or battalions, or to organize a temporary battalion; but no such temporary battalion shall be organized of less than three companies, if there be any organized battalion or battalions present on duty to which they may attach

themselves without exceeding the complement fixed by this Act. If such unattached companies shall not attach or organize themselves in accordance with the provisions of this section, the officer commanding the brigade for the day shall order such assignment or organization.

Exempt from Execution.

682. SEC. 87. Horses and equipments of officers of mounted companies, and all company property of uniformed companies, organized under this Act, shall be exempt from execution.

Acts Repealed.

683. SEC. 88. An Act passed by the legislative assembly of the Territory of Nevada, entitled "An Act in relation to the militia of the Territory of Nevada," approved November twenty-eighth, one thousand eight hundred and sixty-one [p. 106], and all other Acts or parts of Acts of the Territory of Nevada, relating to the militia, are hereby repealed.

For enlistments, bounties, and extra pay of volunteers called into the service of the United States, see Stats. 1865, 389.

An Act relating to the National Guard and the enrolled militia.

Approved March 6, 1893, 90.

Name.

684. SECTION 1. The organized militia, or armed force of the State of Nevada, shall be called the Nevada National Guard.

Members.

685. SEC. 2. All persons subject to military duty and not members of the National Guard shall constitute the enrolled militia.

Duties of Governor as Commander-in-Chief.

686. SEC. 3. The Governor, as Commander-in-Chief of the militia of the state, shall issue commissions to all officers appointed or elected therein. The commissions shall be attested by the Secretary of State with the great seal, and also by the Adjutant-General with the seal of his office. No fee shall be charged for military commissions.

Rank of Officers.

687. SEC. 4. All commissioned officers of the organized volunteer regiments, battalions and companies shall take rank according to the date assigned them by their commissions, and when two of the same grade be of the same date, their rank shall be determined by length of service in the militia, and if of equal service, then by their precedence in the order promulgating their appointment.

Oath on Commission.

688. SEC. 5. A copy of the constitutional oath of office shall be indorsed on each commission, and each officer shall take said oath and transmit a certified copy of the same, made by the officer administering the oath, to the Adjutant-General. The commissions shall take effect on the day of the taking of the oath; *provided*, the certified copy be forwarded.

Consequences of Failure to Take Oath.

689. SEC. 6. The failure to take the oath or to forward the certificate thereof shall not be a bar to the prosecution of any officer as such, if he shall have performed any act or function pertaining to the office, nor shall the failure in taking or forwarding of the oath prescribed at enlistment be a bar to the prosecution of any member; but such failure on the part of either officer or other member shall be a misdemeanor, and as soon as known at headquarters, the office shall be declared vacant, or the membership void and of no effect.

Informality in Appointment.

690. SEC. 7. No informality in an appointment or a commission, or in the qualification thereon, shall invalidate the acts or commands of an officer performing duties in obedience to orders, but the failure to correct such informality when known shall be a misdemeanor.

Form of Oath.

691. SEC. 8. All persons becoming members of the National Guard of this state shall take and subscribe the following oath, which all commissioned officers thereof are authorized to administer: "I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nevada, and will maintain and defend the laws and all officers employed in administering the same." Which oath, certified by the officer administering the same, must be returned to the Adjutant-General and be preserved with the rolls of the companies.

O'Meara v. Ross, 20 Nev. 61.

Appointing Power.

692. SEC. 9. Each officer entitled to a staff shall appoint the members of his staff, unless otherwise provided by law. Each staff officer so appointed shall be an actual, and not merely constructive, resident of Nevada and of the district or military division in which he is to serve.

Who May Join in Target Practice.

693. SEC. 10. Any officer of a regiment, battalion, or company receiving and accepting any staff appointment, except that of Adjutant, shall be considered as *ipse facto* resigning his commission in such regiment, battalion, or company. Any officer may be permitted by the Commander-in-Chief to join in target practice and matches with the company of which he was a member when appointed or elected.

Meaning of the Word "Company."

694. SEC. 11. The word "company" shall be held to include a company of infantry, a troop of cavalry, or battery of artillery; the word "member" shall be held to include every person, whether officer or private, in the National Guard; the word "militia," not qualified by other words—the words "National Guard" and the words "organized militia"—shall be deemed to refer only to the Nevada National Guard.

Tenure of Office.

695. SEC. 12. Every person appointed to an office shall hold the office either at the pleasure of the appointing officer, or until his successor shall have been appointed and qualified.

Vacancy, How Filled.

696. SEC. 13. When there shall be a vacancy in an elective office, unfilled by the electing power, the Commander-in-Chief shall have power to appoint an officer to fill the vacancy for a stated term not exceeding one year. During the term, or at the end thereof, an election may be had to fill the vacancy to occur at the end of the term.

Who May Appoint Officers.

697. SEC. 14. The Commander-in-Chief shall have the power to appoint from the members of the National Guard all officers that may by law be required, and for whose appointment or election no other provision is made; but the appointment of a general officer, except the Adjutant-General, shall be made by and with the advice and consent of the senate.

Mustering, by Whom and When Made.

698. SEC. 15. It shall be the duty of each and every commanding officer of any volunteer company in this state, on or before the last Mondays of March

and September of each year, to muster his company and to make out in triplicate muster rolls setting forth the names and number of the members of his company, the officers in the order of their rank and the privates in alphabetical order, and stating at the foot of such muster rolls a list of all arms, accoutrements, ordnance and ordnance stores and other public property in his possession, one of which muster rolls, duly certified, he shall transmit, through his commanding officer, to the Adjutant-General of the state; he shall file one in the office of the County Clerk of his county, and he shall keep the other as a voucher for himself. If such company shall form a part of any organized battalion or regiment, the commanding officer thereof shall transmit the same, with a muster roll of the field and staff officers of the regiment or battalion to the Adjutant-General of the state through the proper channels of military correspondence.

Muster Rolls.

699. Sec. 16. The muster rolls of brigades and divisions shall be made by their respective commanders, in accordance with rules, orders or directions given by the Adjutant-General.

Duties of Registry Agents, County Clerks and School Census Takers.

700. Sec. 17. It shall be the duty of each and every Registry Agent, before receiving pay for his services as such, to send the County Clerk of the county wherein he is serving a full and complete list of the registered voters in his precinct, with their ages and postoffice address. It shall be the duty of each person taking the school census during the year in which a general election is to be held, before receiving compensation, to send to the County Clerk by mail the name, age and postoffice address of every male between the ages of eighteen and twenty-one years residing within his district. The County Clerk shall file said list in his office, and shall before the first Monday in December following every general election make out from said lists a new list in duplicate by postoffice addresses of all the persons subject to military duty within the county, and shall forward one copy to the Adjutant-General and retain one copy on file in his office. The retained copy may be a clear letter-press copy, or the second impression made by a typewriter. He shall exclude from said lists the members of National Guard companies whose last preceding muster rolls are filed in his office.

When and How Militia May Be Called Out.

701. Sec. 18. In case of war, insurrection or rebellion, or of resistance to the execution of the laws of this state, or upon the call of any officer of the United States Army, commanding a division, department or district in Nevada, or upon the call of any United States Marshal in Nevada, or of any Mayor of any city, or Chairman of the Board of Commissioners of any county, or of any Sheriff, the Commander-in-Chief is authorized to call into active service any portion of the organized or enrolled militia of this state. In case of the absence of the Commander-in-Chief from the capital, or if it be impossible to immediately communicate with him, the civil or military officer making the requisition for troops may, if he deem the danger imminent and not admitting of delay, serve a copy of such requisition, together with a statement of the Governor's absence or the impossibility of immediately communicating with him, upon the Major-General of the division. In his absence, upon the General of the brigade or commanding officer of the company or detachment, who is hereby authorized to exercise with respect to calling out the troops of his division, brigade, or command, the powers conferred in this section upon the Governor; but if the call shall be disapproved by the Governor, the troops called into service will be immediately disbanded.

Call to Be Responded To.

702. Sec. 19. Such call for any portion of the organized militia shall be made by an order issued and directed to the commanding officer of the company, battalion, regiment, brigade, or division which is so called into service,

designating in such order the particular troops called, the time and place of rendezvous and the officer to whom they shall report. Such order shall immediately be communicated by the officer receiving it to the troops under his command, and he shall rendezvous and report for duty at the appointed place and time.

Call, How Made.

703. SEC. 20. Such call for enrolled militia may be made in such public manner as the Commander-in-Chief may choose. It shall be for definite numbers of men from stated localities, and shall order that they report to certain officers at stated times and places. The officers to whom they are required to report shall be known as State Recruiting Officers, and may be any officers of the National Guard, or in the absence of all such from a county, any person named by the Commander-in-Chief.

704. SEC. 21. Upon orders, each State Recruiting Officer shall go to the place of rendezvous and organize the enrolled militia there reporting, to the number called for, into companies, battalions, or regiments.

Draft Made, When and How.

705. SEC. 22. If there shall not be a sufficient number of volunteers to meet the call, the State Recruiting Officer shall make a draft by lot from the lists of enrolled militia for the county or counties from which they are called. For such purpose the County Clerk of each county shall furnish him such lists upon demand. But if there be no such lists available, then said State Recruiting Officer shall select or cause to be selected by assistants, to appoint whom he is hereby authorized, by lot if possible, but if not so possible then otherwise, a sufficient number of persons subject to military duty to meet the requirements of the call.

Penalty for Disobedience to Orders.

706. SEC. 23. Any member of the National Guard of this state who shall neglect or refuse to rendezvous or organize when ordered out by the Commander-in-Chief shall be guilty of a disobedience of orders, and shall be tried and punished by a court-martial, and any person subject to military duty who shall refuse or neglect to rendezvous or organize when drafted, as provided in this Act, shall be subject to a fine of not less than fifty (\$50) nor more than five hundred (\$500) dollars, to be recovered by an action to be brought by the District or Prosecuting Attorney, in the name of the State of Nevada, upon a certificate of the officer appointed to make the draft, before any court of competent jurisdiction in the county from which the person was drafted. Any member of the National Guard guilty of a disobedience to orders, as herein specified, if not tried and punished by a court-martial, may, on the order of his commanding officer, be tried and punished in the civil courts, in like manner as any other person subject to military duty.

Officers of Temporary Battalions.

707. SEC. 24. Temporary battalion and regimental officers of drafted troops may be named by the State Recruiting Officer, but permanent officers shall be named by the Commander-in-Chief.

Vacancies, How Filled.

708. SEC. 25. If not otherwise vacated or terminated, the commission of any officer called into active service shall continue until he shall be mustered out by the order of the Commander-in-Chief. All vacancies of officers and non-commissioned officers in active service shall be filled by appointment or promotion, the first by the Commander-in-Chief and the second by the commanding officer of the battalion, or of the company, in case such company forms no part of any battalion. In filling such vacancies of commissioned officers, the Commander-

in-Chief shall, as a general rule, promote by seniority or appoint, on the recommendation of their superior officers, those in active service, and in any case of departure from this rule, the Commander-in-Chief shall report his reasons for such departure to the senate. The commanding officer of troops in active service may nominate to any vacancy for personal bravery or service in siege or battle, and if the Governor shall commission some other person than the one so nominated, he shall report his reasons to the senate, and if the senate, in either of the foregoing cases, shall disapprove of the reasons given, the commission so given shall be regarded as vacated, and the Governor shall immediately proceed, with the advice and consent of the senate, to fill such vacancy.

Substitute Furnished, How.

709. SEC. 26. Any private of the National Guard, and any person of the enrolled militia called or drafted into service may furnish as a substitute any person fit for military duty who has not been called or drafted into service.

Adjutant-General.

710. SEC. 27. The Adjutant-General shall, on and after the first Monday in January, eighteen hundred and ninety-five, be appointed by the Commander-in-Chief.

Mileage.

711. SEC. 28. On and after the first Monday in January, eighteen hundred and ninety-five, the Adjutant-General shall receive fifteen (15) cents per mile for each mile actually and necessarily traveled by him in the discharge of his official duty.

Rank and Duties of Adjutant-General.

712. SEC. 29. The Adjutant-General shall be Chief of the Governor's staff. He shall also be Quartermaster-General, Chief of Ordnance, Commissary-General and Inspector-General. He may appoint, when necessary, officers to act in his stead in the performance of his ex officio duties.

Adjutant-General to Inspect.

713. SEC. 30. The Adjutant-General shall at least once during each year visit within its own county every company of the National Guard in the state, and shall inspect the dress, arms and bearing of every soldier appearing, also every regimental, brigade and division officer and staff, and he shall report such inspection to the Commander-in-Chief.

Rank and Duties of the Adjutant-General.

714. SEC. 31. It shall be the duty of the Adjutant-General to take charge of and to carefully guard and preserve and to account for all arms, accoutrements, ammunition, ordnance stores and other military property belonging to this state or granted to it by the Congress of the United States. He shall keep and file in his office all returns, reports and military correspondence made in accordance with this Act. He shall keep an account of all moneys received and expended by him. He shall, on or before the first Monday in January of each year, make to the Governor, to be by him laid before the legislature, a report of all the transactions of his department since the last annual report, containing:

First—An account of all moneys received and expended, unless the same shall have been accounted for in the report of the State Controller.

Second—An account of all arms, accoutrements, ammunition, ordnance stores and military property of every description belonging to the state, from what source received, to whom issued, or how expended, and by whose order.

Third—A statement of the present condition of all such property under his charge, and if any such property shall not be under his charge he shall state in whose possession the same may be.

Fourth—The number, strength and condition of the National Guard, and the strength of the enrolled militia of the state. He shall also make and transmit

an annual return of the militia of this state, pursuant to the requirements of the Act of Congress of March second, eighteen hundred and three, to the President of the United States, a copy of which, duly certified, he shall lay before the Commander-in-Chief of this state. He shall be the medium of military correspondence with the Commander-in-Chief.

Bond of Adjutant-General, How Approved.

715. SEC. 32. Before entering upon the duties of his office, the Adjutant-General shall give bonds to the people of the State of Nevada, with good and sufficient sureties, to be approved by the Governor, in the sum of ten thousand (\$10,000) dollars, conditioned that he shall faithfully perform all the duties enjoined on him by law. If at any time the Governor shall deem the sureties so given to be insufficient, he shall require the Adjutant-General to give new sureties, to be approved by him, and if the Adjutant-General shall refuse or neglect to do so the Governor shall suspend him from office, and immediately report his proceedings to the senate, if the legislature be in session, and if not, then at the beginning of the next session, and if the senate approve such suspension, it shall be regarded as a removal from office, but if the senate disapprove of the suspension the Adjutant-General shall resume the duties of his office. During the time of his suspension from office he shall receive no portion of his salary, but if such suspension is disapproved he shall receive his back pay.

Duties of Adjutant-General.

716. SEC. 33. In making his returns to the Adjutant-General of the United States of the enrolled militia of Nevada, the Adjutant-General of this state is hereby authorized and directed to compile and report, as the enrolled militia of Nevada, sixty per cent of the voters voting at the last general election, as shown by the report of the State Board of Canvassers, whenever by failure of other officers to perform their duties exact lists of the enrolled militia are not on file in his office.

Who Liable to Military Duty.

717. SEC. 34. Every able-bodied male inhabitant of this state between the ages of eighteen and forty years, not exempt by law, shall be subject to military duty, and shall be organized and enrolled as herein directed.

SEC. 35 repealed, Stats. 1899, 37.

SEC. 36 repealed, Stats. 1895, 109, which Act is repealed, Stats. 1897, 64.

Company Organized, How.

718. SEC. 37. Whenever a sufficient number of persons by the provisions of this Act, citizens of any county of this state subject to military duty, shall subscribe to a call for the organization of a volunteer company, the District Judge of said county, upon the application of the persons who have subscribed as above, shall appoint some suitable person, resident of the county, to open a book in which he shall enter the names of the persons so volunteering, and shall fix a time and place of meeting for the purpose of organization, by giving ten days' notice thereof by publication in some newspaper, or by posting notices in at least three public places in the county.

Officers Elected.

719. SEC. 38. The person so appointed shall preside at said meeting and organize the same; he shall superintend the election of the officers of said company, which election shall be by ballot, and shall require a majority of all the voters of the company to elect an officer; he shall make out after said election shall have been determined, a list of the persons so volunteering, a certificate of each officer so elected, and transmit them to the Adjutant-General of the state, together with a copy of the proceedings of said meeting and a copy of his appointment and of the notice of said meeting duly certified by him, and if it shall be found that such company has been organized and such officers elected

in conformity with law, such company shall be listed in the office of the Adjutant-General as a company of the organized volunteer militia of this state, and the officers so elected shall be commissioned by the Commander-in-Chief and shall hold their respective office for the term for which they are elected.

SECS. 39, 40, and 42 repealed, Stats. 1899, 37.

SEC. 41 repealed, Stats. 1895, 109, which Act is repealed, Stats. 1897, 64.

Battalion, How Formed.

720. SEC. 43. When a sufficient number of companies wish to form themselves into a battalion or regiment they shall give notice through their commanding officer to the Brigadier-General of their brigade, or in his absence, to the Adjutant-General, who shall, if upon notice the Adjutant-General approve such formation, appoint some suitable officer to hold an election of the officers of such battalion or regiment, and the officers so appointed shall fix a time and place for such election, by giving ten days' notice thereof, by publication in some newspaper, or by posting at least one notice in a conspicuous place in the armory of each company affected. Such election shall be by ballot by a majority of the commissioned officers of the companies, calling for the organization of the battalion or regiment. The officer so appointed to hold the election shall preside over and superintend such election, and as soon as it shall have been determined he shall make out certificates of election to the officers so elected, and a certified account of the proceedings of said meeting, with a certified copy of the notice of said meeting, all of which he shall transmit to the Brigadier-General of the brigade, who shall transmit them, with a certified copy of the appointment of such officer to hold the election, to the Adjutant-General of this state through the ordinary channels of military correspondence.

Commander-in-Chief, Powers Of.

721. SEC. 44. The Commander-in-Chief may attach an unattached company to a battalion or regiment temporarily or permanently. He may order appropriate separate organizations to form battalions and regiments and elect officers, and may, when necessary, appoint temporary officers to command said new bodies until they shall have elected commanding officers.

Brigade, How Formed.

722. SEC. 45. When there are two or more regiments, the Commander-in-Chief may form them into a brigade, and appoint a Brigadier-General, and when there are two or more brigades, he may form them into a division, and appoint a Major-General; *provided*, that he may retain in office any officer serving at the time of the passage of this Act, until the end of his own term of office.

Staff of Commander-in-Chief.

723. SEC. 46. The military staff of the Commander-in-Chief shall consist of one Adjutant-General, three Aids-de-Camp with the rank of Lieutenant-Colonel, one Chief Engineer, one Paymaster-General, one Judge Advocate-General, and one Surgeon-General, each with the rank of Colonel.

Staff of Major General.

724. SEC. 47. The staff of each Major-General of Division shall consist of one Assistant Adjutant-General, with the rank of Lieutenant-Colonel; two Aids-de-Camp, with the rank of Major; one Engineer Officer, one Ordnance Officer, one Quartermaster, one Commissary, one Paymaster, one Division Inspector, one Judge Advocate, and one Surgeon, with the rank of Lieutenant-Colonel, and four staff Orderlies with the rank of Sergeant-Major. The staff of the Adjutant-General shall consist of one Aid-de-Camp, with the rank of Captain. The staff of each General of Brigade shall consist of one Assistant Adjutant-General, with the rank of Major; one Aid-de-Camp, with the rank of Captain; one Engineer Officer, one Ordnance Officer, one Quartermaster, one Commissary, one Pay-

master, one Brigade Inspector, one Judge Advocate, and one Surgeon, with the rank of Major, and two staff Orderlies, with the rank of Sergeant-Major.

SEC. 48 repealed, Stats. 1897, 63.

SECS. 49 and 50 repealed, Stats. 1899, 37.

By-Laws of Battalion or Regiment.

725. SEC. 51. Regiments, battalions and companies may adopt, for the regulation of their business and the government of their members, constitutions, by-laws and rules, not in conflict with the laws of this state; *provided*, that unless a company be then under call for active service, no member shall be elected except by ballot and upon one month's notice given at a regular meeting and posted in the armory, and the rules as to the number of votes required to elect or defeat a candidate shall not be suspended.

Records, How Kept.

726. SEC. 52. It shall be the duty of the acting Orderly Sergeant of the company and Sergeant-Major of the battalion or regiment to keep a perfect and complete record of the constitution, by-laws, rules and regulations of his company, battalion, or regiment, which shall be signed by the Captain or Commander, and countersigned by the Orderly Sergeant or Sergeant-Major, and said record shall, at all times, be subject to the inspection of any member of the company, battalion, or regiment, and all military officers or persons interested therein, and if any member of such volunteer company, battalion, or regiment shall fail to comply with the provisions of such constitution, by-laws, rules and regulations, he may be expelled from such company, battalion, or regiment, and his name erased from its roll.

Rules of Government.

727. SEC. 53. The rules of discipline and regulations of the Army of the United States shall, so far as the same may be deemed practicable by the Commander-in-Chief, constitute the rules of discipline and regulations of the organized militia of this state, and the rules and articles of war established by Congress for the Army of the United States shall be adopted, so far as they may be applicable, for the government of the militia of Nevada in active service.

Powers of Commander-in-Chief.

728. SEC. 54. The Commander-in-Chief may promulgate such directions, rules and regulations for the government and conduct of the National Guard as may be necessary, but he shall not require any company to go beyond the boundaries of the county to which it belongs, except on a call for active service, or by special authority of law.

Enlistment.

729. SEC. 55. Persons elected to membership in a company shall enlist either for one, three, or five years.

ReEnlistment, When Presumed.

730. SEC. 56. When any member shall continue in the National Guard three days after the expiration of the term of his enlistment he will be deemed reënlisted for a similar term.

Members of Militia May Be Discharged, When.

731. SEC. 57. Every active member of a company who shall have served on enlistment for three years shall be entitled to a certificate of service and honorable discharge; and every member of a company who shall have served for seven years shall, in addition, be entitled to a metallic bar as a designation of honorable service to the state. But no certificate or bar shall be granted unless the person to whom it is granted shall have attended at least sixty per cent of the company drills during the required time, except he be a commissioned officer above the rank of Captain.

Past Service.

732. SEC. 58. Every person at the time of the passage of this Act, a member of a company, and who has been a member for not less than two years, may have the time of his past service taken into account in granting certificates or bars; *provided*, he shall after the passage of this Act, and without having discontinued said service, enlist and serve for not less than one year.

Power of Commander-in-Chief.

733. SEC. 59. The Commander-in-Chief shall have power to temporarily suspend the requirements regarding enlistment and allow persons to join companies for a less time than one year; *provided*, such suspension shall relate to all the companies in the state and shall be promulgated by a general order. But the time of such suspension shall not be taken into account in computing the time of service required for certificate or bar.

Period of Enlistment.

734. SEC. 60. Every person joining a company shall be deemed enlisted for a period of one year from the date of his election, unless he enlists for a longer period.

Exempt from Jury Duty, When.

735. SEC. 61. Every member of a company who has attended sixty per cent of the drills of his company for a year past, and who produces a certificate to that effect, signed by the officer commanding the company, and every regimental officer actually performing military duty as such, shall be exempt from jury duty. Any person not properly exempt under the provisions of this section, may be punished by the court for contempt, for falsely claiming such exemption.

Duties of Military Auditors—Military Supplies May Be Sold, When.

736. SEC. 62. It shall be the duty of the Board of Military Auditors to audit and pay all reasonable expenses incurred by volunteer companies in the service of this state under orders for active duty, and officers attached to the same, and all other claims required under the provisions of this Act; to personally inspect, at least once in each year, all military supplies, stores and property belonging to the state and in possession of the Adjutant-General, and to condemn such portion thereof as may be deemed worthless or unfit for safe use by the militia of this state, and cause the same to be sold or disposed of, as may be deemed for the best interest of the state; and the Treasurer of the state is hereby required to pay such claims as herein provided for, and as audited by said board out of any moneys in the general or military fund not otherwise appropriated.

No Compensation.

737. SEC. 63. No member of the National Guard shall be entitled to compensation for attendance at an encampment merely for drill practice or instruction.

System of Drill.

738. SEC. 64. The system of instruction in drill regulations prescribed for the different arms and corps in the United States Army shall be followed in the military instruction and practice of the militia of this state, as far as practicable, and the use of any other system is forbidden.

SEC. 65 repealed, Stats. 1897, 63.

Acts and Parts of Acts Repealed.

739. SEC. 66. Sections one, two, three, four, five, six, seven, eight, nine, twelve, sixteen, seventeen, eighteen, nineteen, twenty, twenty-two, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, fifty-three, fifty-five, seventy-two and seventy-five of "An Act to provide for organizing and disciplining the militia of the State of Nevada,"

approved March four, eighteen hundred and sixty-five [p. 189], and all Acts or parts of Acts amendatory of and supplemental to said sections, and an Act amendatory of and supplemental to said above entitled Act approved March one, eighteen hundred and eighty-three [p. 91], and an Act amendatory of and supplementary to said above entitled Act, approved March three, eighteen hundred and eighty-seven [p. 101], and all other Acts and parts of Acts in so far as they conflict with the provisions of this Act, are hereby repealed.

An Act relating to the Nevada National Guard.

Approved March 6, 1893, 36.

National Guard to Consist of One Battalion.

740. SECTION 1. In time of peace the Nevada National Guard shall consist of one battalion of not more than five companies of infantry, to be allotted and stationed in such localities of the state as the necessity of the service, in the discretion of the Commander-in-Chief, may require, and he may transfer, attach, consolidate, or disband companies, and to reorganize the same as he may deem advisable.

Major.

741. SEC. 2. The battalion shall have one Major, who shall have served not less than three months as a commissioned officer in the United States Volunteers or regular army, and shall be appointed by the Commander-in-Chief.

Commissioned Staff to Consist Of.

742. SEC. 3. The commissioned staff of the battalion shall consist of one Adjutant, one Quartermaster, one Assistant Surgeon and one Chaplain, each with the rank of First Lieutenant, and nominated by the Battalion Commander.

Non-Commissioned Staff.

743. SEC. 4. The non-commissioned staff of the battalion shall consist of one Sergeant Major, one Quartermaster Sergeant, one Hospital Steward and one Principal Musician, appointed by the Battalion Commander.

Company to Consist Of.

744. SEC. 5. Each company shall consist of one Captain, one First Lieutenant, one Second Lieutenant, one First Sergeant, five Sergeants, eight Corporals, one artificer, one cook, one wagoner, and two musicians, and not less than forty, and not more than eighty, privates.

Age of Enlistment of Every Candidate.

745. SEC. 6. Every candidate for admission to the Nevada National Guard, except commissioned officers, must be between the ages of eighteen and forty-five years, and shall pass the physical examination required by the United States Army, and such examination shall be certified by a regular practicing physician of this state. Said certificate must accompany the application for membership. All enlisted members of the Nevada National Guard, at the date of the passage of this Act, shall, within thirty days thereafter, furnish the required certificate of physical examination, or be discharged from membership.

Repeals.

746. SEC. 7. Sections thirty-five, thirty-nine, forty, forty-two, forty-nine and fifty of "An Act relating to the National Guard and the enrolled militia," approved March 6, 1893 [p. 90]; and sections one and ten of "An Act amendatory of and supplemental to an Act entitled 'An Act relating to the National Guard and the enrolled militia,' approved March 6, 1893," approved March 18, 1895 [p. 108]; and section four of "An Act relating to the Nevada National

Guard," approved March 8, 1897 [p. 63]; and all other Acts and parts of Acts in so far as they conflict with the provisions of this Act, are hereby repealed.

An Act relating to the Nevada National Guard.

Approved March 8, 1897, 63.

Duty of County Commissioners in Relation to Military Equipments, etc.—Expense, How Paid.

747. SECTION 1. It shall be the duty of the Board of County Commissioners of any county in which public arms, accoutrements, or military stores are now had, or shall hereafter be received for the use of any companies of the Nevada National Guard, subject to approval by the Adjutant-General, to provide a suitable and safe armory for companies of the National Guard organized within such county. The expense of procuring and maintaining such armories shall be paid out of the general fund of the county, to be paid by the County Treasurer on presentation of the Auditor's certificate that such allowance has been made by the Board of County Commissioners. The Treasurer shall require duplicate receipts from the person presenting said certificate, one of which shall be forwarded to the Adjutant-General, the other thereof shall be delivered to and received by the State Treasurer as so much money and shall be considered and allowed for the full amount thereof in the settlement by the Controller and State Treasurer with the County Treasurer. Such expenses shall not exceed forty (\$40) dollars per month for any company. *As amended, Stats. 1899, 31.*

Requirements for Support.

748. SEC. 2. No company shall be entitled to receive public money for its support unless it shall meet for drill and instruction not less than one hour, at least twice in each month, and shall practice at rifle firing twice each month during five months in each year at such ranges and targets, number and rounds under such rules and regulations as may be prescribed by the Commander-in-Chief.

Members Responsible for Equipments—Misdemeanor.

749. SEC. 3. Any person who shall wear or use, except when on military duty, or by special permission of his commanding officer, any arm, equipments, uniform, or other article or portion thereof of military property belonging to the state, or the company of which he is a member, or any person who shall refuse or neglect to return to his commanding officer, any state military property aforesaid, within one day after being notified by the commanding officer to make said return or to place the same in his charge, or any person who shall willfully or wantonly injure or destroy any state military property aforesaid and refuse or neglect to make good such injury or loss, or who shall sell or dispose of, secrete, or remove the same, with intent to sell or dispose thereof, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than ten nor more than one hundred dollars, together with costs of prosecution or by imprisonment in the county jail for not less than five nor more than fifty days, or by both such fine and imprisonment at the discretion of the court, to be recovered on the complaint of the Adjutant-General, or other commissioned officer, by an action brought by the District or Prosecuting Attorney, in the name of the State of Nevada, before any court of competent jurisdiction, and the money so recovered shall be paid into the state treasury as a part of the military fund.

This section supersedes Act of 1893, Stats. 1893, 62.

SEC. 4 repealed, Stats. 1899, 37.

Repealing Act.

750. SEC. 5. Sections forty-eight and sixty-five of "An Act relating to the National Guard and enrolled militia," approved March 6, 1893 [p. 90], and an

Act amendatory of and supplementary to said above entitled Act, approved March 18, 1895 [p. 108], and all other Acts and parts of Acts in so far as they conflict with the provisions of this Act, are hereby repealed.

An Act relating to military encampment.

Approved March 6, 1893, 119.

Duties of Governor as to Military Encampment.

751. SECTION 1. It shall be the duty of the Commander-in-Chief to order out the organized militia each year, or each alternate year, for not less than five days, for the purpose of military drill in camp, whenever a sufficient sum of money shall have been appropriated therefor by the legislature.

Sec. 2 obsolete.

Military Encampment, Place of Holding.

752. SEC. 3. In selecting a site for an encampment the officer in charge of the same shall obtain complete control for the entire time of the encampment of the whole of the grounds used and of as much adjoining land on each side as may be necessary; *provided*, that all encampments authorized by this Act shall be held at, or in the immediate vicinity of, the state capital. *As amended, Stats. 1895, 87.*

Penalties for Disobedience.

753. SEC. 4. When ordered out for camp duty, any active member of the organized militia, refusing or neglecting to comply with the order of his superior officer, shall be guilty of a misdemeanor, and shall be fined not less than twenty nor more than fifty dollars, or imprisonment not less than ten days, and may be expelled from the company, battalion, or regiment of which he is a member. Such fine or imprisonment may also be imposed by a justices' court.

LIVE STOCK.

An Act concerning estray animals.

Approved November 8, 1861, 22.

Estrays to Be Reported to a Justice—Procedure.

754. SECTION 1. Every person finding any stray horse, mare, colt, jack, or jenny, or any neat-foot animal, or any number of these animals, upon his farm or premises, or upon the public highway or domain, and shall take the same up for keeping, shall, within ten days, if said animal or animals remain on his farm or premises, or keeping, go before some Justice of the Peace of his township, and give, under oath, a full description of the marks and brands, color, and kind of such animal or animals, also the time, and all necessary information that will lead to the cause of the said animal or animals coming into his keeping, that may have come to his knowledge, and the marks and brands have not been altered since they came to his farm or premises; *provided*, no animal shall be considered an estray if the owner is known to the person finding it. At the time the taker up appears before the Justice, as aforesaid, the Justice shall, without delay, appoint two disinterested appraisers, who are resident householders of the county, to appraise and describe such animal or animals, and cause a notice of such estray or estrays, with a full description of the same, giving the brands, marks, and colors thereon, to be published once a week for two consecutive months, in a newspaper published at the county seat of the county in which the

animal or animals may be taken up, and if there be no newspapers published at the county seat, then the said notice shall be published in the newspaper nearest to the same. The said Justice shall also cause three notices to be posted of such estrays, in conspicuous places, one of which shall be the Justice's office, and the others the vicinity of the place where the stray animal or animals may have been taken up. For refusing or neglecting to comply with the provisions of this section of this Act, Justices of the Peace shall be deemed guilty of misdemeanor in office, and the taker up of such stray or estrays shall be deemed guilty of grand or petit larceny, according to the value of the stray animal or animals taken up, and, on conviction thereof, shall be punished as is provided in the law of the State of Nevada entitled "An Act concerning crimes and punishments." *As amended, Stats. 1877, 90.*

Record of Estray—How Restored to Owner.

755. SEC. 2. It shall be the duty of the said Justice to record the description, together with full information given by the taker up, and the Justice shall, within ten days, if the stray animal or animals is or are not before proved by their proper owner, transmit a full transcript to the County Recorder of his county, and the said Recorder shall record the same in his stray book; said book shall be subject to examination by all persons making application to the Recorder, and also the stray book of the Justice of the Peace; and every person claiming and proving said stray animal or animals that has or have been posted by this Act, shall have restitution of the property so claimed, by paying all costs and such charges as may be awarded to the taker up by the Justice of the Peace of his county.

Penalty for Neglect to Comply With Act.

756. SEC. 3. Any person knowing of any horse, mare, colt, mule, jack, or jenny, or any number of neat cattle, or any number of these animals, running at large on his farm or premises, and not knowing the proper owner, who refuses or neglects to comply with the requisitions of the foregoing section, shall be subject to a fine not exceeding the value of the stock so neglected to be posted, recoverable before any court having jurisdiction of the same.

Estrays Not to Be Used.

757. SEC. 4. No person shall be allowed or permitted to use, or cause to be used, to profit or otherwise, any animal within his charge or keeping, under the foregoing provisions of this Act; and any persons failing or refusing to comply with the requisitions set forth in this section shall be deemed guilty of grand or petit larceny, according to the value of the same, and, on conviction thereof, be punished in accordance with the provisions of the Act concerning crimes and punishments. *As amended, Stats. 1877, 90.*

Penalty for Moving Estrays.

758. SEC. 5. The owners of any stray animal, which is legally taken up under the provisions of this Act, shall not be permitted to take, lead, or drive the same from the farm or possession of the person legally possessed of such animal, until proven and charges paid according to the provisions of this Act; and any person knowingly and willfully violating the provisions of this section, shall be subject to all the penalties that he would be subject to under the statute law, provided he had no claim on such animal.

Removing. Larceny, When.

759. SEC. 6. If any one shall remove any stray animal from any rancho, or farm, or inclosure, contrary to the provisions of this Act, who shall not be the owner of the same, he shall be deemed guilty of grand or petit larceny, according to the value of the property.

Right to Reclaim Forfeited.

760. SEC. 7. If the owner of any lost or stray animal shall not appear and

prove his property therein within three months, provided they are neat-foot animals and valued at fifty dollars and under that amount, and six months, provided they are horses, mules, or other animals, and valued at one hundred dollars and upwards, after the same is posted, he shall forfeit his right thereto, and the property in such animal shall be vested in the taker up, on his paying into the county treasury the one-half appraised value thereof, as fixed by the appraisers as aforesaid.

Moneys Paid, How Disposed Of.

761. SEC. 8. All moneys paid into the county treasury, under the provisions of this Act as above provided, shall become a part and belong to the county school fund of the county in which the proceedings are had, and be drawn from the county treasury on proper warrant, and shall be exclusively appropriated to the county school fund, and for no other purpose.

Fees of Justice and Recorder—Costs, by Whom Paid.

762. SEC. 9. The Justice of the Peace and Recorder shall receive for their services in any one case, whether for one or more animals, two dollars and fifty cents each; and all other officers or persons shall receive for their services the same fees as are allowed for similar services within the county. All costs and charges accruing [accruing] under this Act shall be paid by the person taking up the stray animal or animals, but shall be reimbursed by the owner, upon proof and delivery of his property. *As amended, Stats. 1877, 186.*

Taker Up Not Liable for Escape or Death.

763. SEC. 10. If any stray animal die or escape from the possession of the taker up, at any time before the expiration of six months from the taking up, he shall not be held liable in any manner on account of such animal.

Stallions and Spanish Bulls to Be Castrated.

764. SEC. 11. That if any stallion one and a half years old or upwards, shall be found running at large, out of the enclosed ground of the owner or keeper of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner or keeper thereof, if said owner or keeper be known; and if the owner or keeper do not appear within three days thereafter, and pay to the said taker up five dollars as a compensation for his trouble, the taker up shall proceed to advertise said horse; and the same proceedings shall be had in every respect, as hereinbefore provided in cases of stray horses; *provided*, that the taker up may, at the expiration of twenty days from the time of advertising, castrate, or procure to be castrated, the said horse, which shall be done at the risk and expense of the owner. And all Spanish bulls of one and a half years old and upwards, found running at large, shall be castrated, or cut, as hereinbefore provided.

An Act concerning unlawful stock.

Approved April 10, 1882, 9.

Stallions.

765. SECTION 1. From and after the passage of this Act, it shall be unlawful for stallions, of the age of two years and upwards, to run at large among the settlements of this state.

Duty of Persons Taking Up.

766. SEC. 2. If the owner or owners, or the agent of any owner or owners, shall permit any animal as aforesaid, contrary to the provisions of the first section of this Act, to run at large in the settled portions of this state, it shall be lawful for any person to take up and confine the same, giving information to the owner or owners, or agent as aforesaid, of such seizure, if the party or parties shall be known; or, if they shall not be known, then posting notices, conveying

such information, in three of the most public places in the township or district in which the animal is taken up. If, at the expiration of ten days from the date of such information given, or of such notice posted, the owner, owners, or agent, as aforesaid, of such animal, shall not appear and legally reclaim it, by paying all the expenses that may have been incurred in the taking up, confining, and keeping of the animal, then it shall be lawful for the taker up to have it emasculated at the risk and additional expense of the owner or owners.

May Be Sold—Proceeds, How Disposed Of.

767. SEC. 3. If, at the expiration of thirty days thereafter, no such owner, owners, nor agent shall appear and legally reclaim such animal as aforesaid, then it shall be the duty of the person having possession of it to deliver the same to the Constable of the township in which the animal has been found and confined, whose duty it shall be, after three days' notice of the intent, to make sale of the same to the highest cash bidder, and after paying all the necessary expenses incurred in the premises, then to pay the residue of the proceeds of such sale into the treasury of the county in which such sale shall have taken place, for the benefit of the common school fund; *provided, however*, that if the owner or owners of such property shall make claim to it at any time before such sale can legally be made, nothing in this Act shall be construed to exempt such owner or owners from payment of all expenses incurred.

Original Horses Not Allowed to Run at Large.

768. SEC. 4. No original horse shall be allowed to run at large in any of the settled portions of this state, and any owner or owners of such horse who shall permit it to run at large for the space of five days shall be liable to a forfeiture of the same. Any person shall be authorized to take up the same; and it is hereby made the duty of such person to deliver the animal, immediately, to the Constable of the township in which it may be taken up, who, after twenty days' notice, by written or published notification of the intent, posted in two conspicuous places in such township, shall proceed to sell the same to the highest cash bidder; and, after all expenses incurred in the premises shall have been defrayed, the residue of the proceeds of such sale, if there be any, shall be paid into the treasury of the county in which such sale shall have taken place, to be appropriated to the common school fund.

Animals Trespassing, etc.

769. SEC. 5. Any hog or hogs, goat or goats, found trespassing upon the premises of any person or persons in this state, may be taken up by the owner or owners of such premises, and safely kept at the expense of the owner or owners of the hog or hogs, goat or goats, so found trespassing. *As amended, Stats. 1875, 146.*

Notices to Be Posted.

770. SEC. 6. All persons taking up hogs trespassing upon their lands, whether inclosed or not, shall, immediately thereafter, post notices in three conspicuous places in the precincts in which such persons reside, containing a description of the ear or other marks of such hogs, whereby the owners may identify them as their property.

Restitution of Property.

771. SEC. 7. If the owners of such hogs come forward within ten days of the time when such notices were posted, and prove them to be their property, the person or persons taking them up shall deliver them to such owner or owners, upon their paying all the costs, charges, and damages sustained by reason of their trespassing.

Forfeiture of Property.

772. SEC. 8. If, however, the owner or owners shall not claim the same within ten days, then the person taking up such hogs shall immediately notify a

prove his property therein within three months, provided they are neat-foot animals and valued at fifty dollars and under that amount, and six months, provided they are horses, mules, or other animals, and valued at one hundred dollars and upwards, after the same is posted, he shall forfeit his right thereto, and the property in such animal shall be vested in the taker up, on his paying into the county treasury the one-half appraised value thereof, as fixed by the appraisers as aforesaid.

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761. SEC. 8. All moneys paid into the county treasury, under the provisions of this Act as above provided, shall become a part and belong to the county school fund of the county in which the proceedings are had, and be drawn from the county treasury on proper warrant, and shall be exclusively appropriated to the county school fund, and for no other purpose.

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Stallions and Spanish Bulls to Be Castrated.

764. SEC. 11. That if any stallion one and a half years old or upwards, shall be found running at large, out of the enclosed ground of the owner or keeper of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner or keeper thereof, if said owner or keeper be known; and if the owner or keeper do not appear within three days thereafter, and pay to the said taker up five dollars as a compensation for his trouble, the taker up shall proceed to advertise said horse; and the same proceedings shall be had in every respect, as hereinbefore provided in cases of stray horses; *provided*, that the taker up may, at the expiration of twenty days from the time of advertising, castrate, or procure to be castrated, the said horse, which shall be done at the risk and expense of the owner. And all Spanish bulls of one and a half years old and upwards, found running at large, shall be castrated, or cut, as hereinbefore provided.

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Approved April 10, 1882, 9.

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766. SEC. 2. If the owner or owners, or the agent of any owner or owners, shall permit any animal as aforesaid, contrary to the provisions of the first section of this Act, to run at large in the settled portions of this state, it shall be lawful for any person to take up and confine the same, giving information to the owner or owners, or agent as aforesaid, of such seizure, if the party or parties shall be known; or, if they shall not be known, then posting notices, conveying

such information, in three of the most public places in the township or district in which the animal is taken up. If, at the expiration of ten days from the date of such information given, or of such notice posted, the owner, owners, or agent, as aforesaid, of such animal, shall not appear and legally reclaim it, by paying all the expenses that may have been incurred in the taking up, confining, and keeping of the animal, then it shall be lawful for the taker up to have it emasculated at the risk and additional expense of the owner or owners.

May Be Sold—Proceeds, How Disposed Of.

767. SEC. 3. If, at the expiration of thirty days thereafter, no such owner, owners, nor agent shall appear and legally reclaim such animal as aforesaid, then it shall be the duty of the person having possession of it to deliver the same to the Constable of the township in which the animal has been found and confined, whose duty it shall be, after three days' notice of the intent, to make sale of the same to the highest cash bidder, and after paying all the necessary expenses incurred in the premises, then to pay the residue of the proceeds of such sale into the treasury of the county in which such sale shall have taken place, for the benefit of the common school fund; *provided, however,* that if the owner or owners of such property shall make claim to it at any time before such sale can legally be made, nothing in this Act shall be construed to exempt such owner or owners from payment of all expenses incurred.

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Animals Trespassing, etc.

769. SEC. 5. Any hog or hogs, goat or goats, found trespassing upon the premises of any person or persons in this state, may be taken up by the owner or owners of such premises, and safely kept at the expense of the owner or owners of the hog or hogs, goat or goats, so found trespassing. *As amended, Stats. 1875, 146.*

Notices to Be Posted.

770. SEC. 6. All persons taking up hogs trespassing upon their lands, whether inclosed or not, shall, immediately thereafter, post notices in three conspicuous places in the precincts in which such persons reside, containing a description of the ear or other marks of such hogs, whereby the owners may identify them as their property.

Restitution of Property.

771. SEC. 7. If the owners of such hogs come forward within ten days of the time when such notices were posted, and prove them to be their property, the person or persons taking them up shall deliver them to such owner or owners, upon their paying all the costs, charges, and damages sustained by reason of their trespassing.

Forfeiture of Property.

772. SEC. 8. If, however, the owner or owners shall not claim the same within ten days, then the person taking up such hogs shall immediately notify a

Constable of the precinct wherein the trespass has been committed, and the Constable shall proceed to sell, at public auction, after giving five days' notice of such sale, by posting notices in three public places in said precinct, all such hogs so taken up; *provided*, that the owners may prove their property and receive the same, by paying all costs and damages, at any time before such sale can take place.

Arbitration of Charges.

773. SEC. 9. If the parties cannot agree as to the amount of charges and damages, then each party may choose one disinterested person, and they may choose a third person, who shall determine the amount thereof; and should the owners not come forward, then the Constable shall select three disinterested persons to determine the amount.

Fees of Officers.

774. SEC. 10. The fees of the Constable, under the provisions of this Act, shall be the same as allowed by law for all similar services.

Surplus Money to Be Paid to Owner.

775. SEC. 11. If there shall be any surplus money arising from the proceeds of such sales, after paying all costs, charges, and damages, the Constable shall pay the same to the owner or owners of such hogs sold; *provided*, that they prove they are entitled to it within fifteen days after the sale, otherwise he shall pay it into the treasury of the county in which such sale shall have been made, taking the receipt of the Treasurer for the same, for the benefit of the common school fund.

Liability of Officers.

776. SEC. 12. Any Constable refusing or neglecting to pay to the County Treasurer, or to the owner or owners, the surplus derived from any sale made under the provisions of this Act, shall be liable for the same on his official bond, and shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars.

An Act to prevent the trespassing of animals upon private property.

Approved December 12, 1862, 13.

Liability of Owner of Stock.

777. SECTION 1. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of neat cattle, shall break into any grounds inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated by neglect of the owner or manager of said animals, he shall for the second and every subsequent offense or trespass be subject to double the damages of such trespass to the owner of said premises.

Animals Not to Be Injured.

778. SEC. 2. If any owner or occupier of any grounds or crops trespassed upon, provided said ground be inclosed within a fence, by animals entering upon or breaking into his or their grounds, whether inclosed by a lawful fence or not, shall kill, maim, or materially injure the animal or animals so trespassing, he, she, or they shall be liable to the owner of such stock for all damages, and for the costs accruing from a suit for such damages, when necessarily resorted to for their recovery; *provided*, the owner or occupier of such grounds or crops so damaged and trespassed upon, may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners, if known, such animals, or so many of them as may be necessary to cover the damages he may have sustained, for ten days, and if not applied for by the proper owner or owners before

the expiration of ten days, the same may be posted under the estray laws of the state, and before restitution shall be had by the owner or owners of such animals, all damages done by them, as well also as the expense of posting and keeping them, shall be paid. Any Justice of the Peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expense of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

Lands of Two or More Under One Inclosure.

779. SEC. 3. When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed any animal on his, her or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others; and if repeated, after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

INJURY TO GROWING CROPS—LAND MUST BE INCLOSED. Chase v. Chase, 15 Nev. 259.

An Act to prevent trespass upon real estate by live stock, fixing damages therefor, and other matters relating thereto, and to repeal an Act entitled "An Act to prevent trespass upon real estate by live stock, and other matters relating thereto," approved March 15, 1889.

Approved February 18, 1893, 30.

Consent of Owner of Range to Be Obtained.

780. SECTION 1. It shall be unlawful for any person or persons to herd or graze any live stock upon the lands of another without having first obtained the consent of the owner or owners of the land so to do; *provided*, that the person claiming to be the owner of said lands has the legal title thereto, or an application to purchase the same, with first payment made thereon.

Damages, How Recovered.

781. SEC. 2. The live stock which is herded or grazed upon the lands of another, contrary to the provisions of the first section of this Act, shall be liable for all damages done by said live stock while being unlawfully herded or grazed on the lands of another, as aforesaid, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor, and said live stock may be seized and held by writ of attachment issued in the same manner provided by the general laws of the State of Nevada, as security for the payment of any judgment which may be recovered by the owner or owners of said lands for damages incurred by reason of a violation of any of the provisions of this Act, and the claim and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of said action.

Does Not Apply.

782. SEC. 3. This Act shall not apply to any live stock running at large on the ranges or commons.

Acts Repealed.

783. SEC. 4. An Act entitled "An Act to prevent trespass upon real estate by live stock, and other matters relating thereto," approved March 15, 1889 [p. 129], is hereby repealed.

An Act to prohibit certain live stock from running at large upon the streets, highways or commons of the cities and towns of the State of Nevada.

Approved February 11, 1893, 19.

Animals Not to Run at Large in Town.

784. SECTION 1. It shall be unlawful for the owner or owners, or any person or persons having in charge any cow, calf, bull, steer, heifer, horse, gelding, mare, colt, jack, jenny, mule or any neat-foot animal, or any number of such animals, to permit or allow them to run at large within the ordinary limits of any city or town of this state between the hours of six o'clock p. m. and seven o'clock a. m. of each day, during any period of the year. Said ordinary limits shall be defined as follows: Within an incorporated city or town, the limits shall be as defined in said incorporated clause or clauses; and within a town or city not incorporated in this state, the said ordinary limits shall be defined as follows: Within such city or town with fifty or more inhabitants, the said limits shall be defined as being within a radius of half mile, radiating from the postoffice of said city or town.

Duties of Sheriffs and Constables.

785. SEC. 2. It shall be the duty of the Sheriff, deputy and deputies, Constable and policemen of or in any town described in section one of this Act, to impound any or all animals mentioned herein.

Fine for Violation.

786. SEC. 3. The owner or owners, agent or agents, or person or persons having charge of such animal or animals, shall be fined five dollars for each and every violation of this Act, and as much more, as in the discretion of the court having jurisdiction thereof, may deem a sufficient amount to cover all damages.

When Animals May Be Impounded and Sold.

787. SEC. 4. Any officer, officers, person or persons named in section two of this Act, having in his charge, after they have been impounded, any of the animals mentioned in this Act, shall post a notice that such animal or animals are in his charge, and if not taken out by the owner or owners, agent or agents, person or persons in charge, by paying all costs, charges and damages, will be sold. After the expiration of ten days the officer or officers, person or persons having such animal or animals, and having given notice, as aforesaid, shall post three written or printed notices in conspicuous places in the town or city where such animal or animals have been taken up, describing the same, giving all marks or brands, if any, and that such animal or animals will be sold by him to pay the charges that have, and will have accrued, against the property, and the costs. He shall sell to the highest bidder, and upon payment of the purchase money shall turn over to the buyer the animal or animals sold, and after deducting the costs of impounding and all accrued costs, including the costs of feeding, keeping and selling, shall pay the balance, if any remains, into the county treasury, where it shall remain subject to the laws governing escheats.

Duty of Officers.

788. SEC. 5. It is hereby made the duty of the several officers in this Act named, to enforce its provisions, and a failure to do so shall be deemed a misdemeanor, and any officer found guilty thereof shall be fined in a sum not exceeding twenty dollars.

An Act relating to trespass of swine, sheep, and goats.

Approved March 5, 1895, 67.

Unlawful for Swine, Goats or Sheep to Run at Large in City or Town Limits.

789. SECTION 1. It shall be unlawful for any swine, sheep, goat or goats, to run at large, or the owner or owners, or any person or persons, having in charge

any swine, sheep, goat or goats, to permit or allow them to run at large within the ordinary limits of any city or town of this state, during any period of the year. Said ordinary limits shall be defined as follows: Within an incorporated city or town the limits shall be as defined in said incorporated clause or clauses; and within a town or city not incorporated in this state, the said ordinary limits shall be defined as follows: Within such city or town, which contains one hundred or more inhabitants, the said limits shall be defined as being within a radius of one mile, radiating from the postoffice of said city or town.

May Be Impounded.

790. SEC. 2. It shall be the duty of any Constable, and the privilege of any citizen of or in any town described in section one of this Act, to impound any swine, sheep, goat or goats.

Owners May Be Fined.

791. SEC. 3. The owner or owners, agent or agents, having jurisdiction over, or charge of, any swine, sheep, goat or goats, shall be fined five dollars for each and every violation of this Act, and as much more as in the wisdom of the court having jurisdiction may deem a sufficient amount to cover all damages.

Manner in Which Impounded Animals May Be Sold—Escheats.

792. SEC. 4. Any Constable, person or persons having in his charge, after they have been impounded, any swine, sheep, goat or goats, shall post a notice that such animal or animals are in his charge, and if not taken out by the owner will be sold. After the expiration of ten days the person having such animal or animals, and having given notice as aforesaid, shall post three written or printed notices in conspicuous places in the town or city where such animal or animals have been taken up, describing the same, giving all marks or brands, if any, and that such animal or animals will be sold by him to pay the charges that have and will have accrued against it, and costs. He shall sell to the highest bidder, and upon payment of the purchase money shall turn over to the buyer the animal or animals sold, and after deducting the damages and costs of sale, shall pay the balance, if any remains, into the county treasury, where it shall remain subject to the laws governing escheats.

An Act entitled "An Act to make it unlawful for the owner or owners of swine, goat or goats to allow them to run at large during a certain period of each year, from and after the approval of this Act."

Approved February 19, 1879, 42.

Goats and Swine Prohibited to Run at Large, When.

793. SECTION 1. It shall be unlawful, from and after the passage of this Act, for any person or persons, who are the owner or owners, or who may have charge of any swine, goat or goats, within this state, to allow them to run at large and be free commoners, from and after the first day of March to the tenth day of November of each and every year. But the intervening period between the tenth day of November to the first day of March of each year, such swine, goat or goats, may be free commoners.

Owners Subject to Damages—Amount of Damages.

794. SEC. 2. Any swine, goat or goats, belonging to any person or persons, that shall break into any yard, flower or vegetable garden, or any inclosure whatever, or shall root up or destroy any pasture, field, or growing grass for hay purposes, or any kind of growing crop whatever, whether the same be inclosed or not during the period that such swine, goat or goats are prohibited to run at large and be free commoners, by section one of this Act, such owner or owners shall be subject to such damages as shall be equal to twice the value of the property broken into, eaten up or destroyed.

Damages, How Obtained.

795. SEC. 3. All actions for damages arising, under the provisions of this Act shall be tried and determined in the court having jurisdiction thereof, as in other causes made and provided.

An Act to prohibit swine from running at large and being free commoners.

Approved March 2, 1885, 50.

Swine Not to Be Free Commoners.

796. SECTION 1. It shall be unlawful for any person or persons, who are the owner or owners, or who may have charge of any swine within this state, to allow them to run at large and be free commoners.

Owners of Swine Responsible for Twice the Value of Property Destroyed.

797. SEC. 2. Any swine belonging to any person or persons, or under the charge of any person or persons, that shall break into any yard, flower or vegetable garden, or in any inclosure whatever, or shall root up or destroy any pasture, field or growing grass for hay purposes, or any kind of growing crop whatever, whether the same be inclosed or not, such person or persons, owner or owners, shall be subject to such damages as shall be equal to twice the value of the property broken into, eaten up or destroyed.

Damages.

798. SEC. 3. All actions for damages arising under the provisions of this Act shall be tried and determined in the court having jurisdiction thereof, as in other cases made and provided.

799. SEC. 4. This Act shall take effect and be in force from and after thirty days after its approval.

An Act to regulate marks and brands of stock.

Approved February 27, 1873, 99.

Marks, Brands and Counterbrands.

800. SECTION 1. Owners of horses, mules, cattle, sheep, goats, or hogs, running at large, must have a mark or brand, and counterbrand, different from any one in use by any other person, so far as may be known.

Brand to Be Recorded—Fees For.

801. SEC. 2. Every such owner shall record with the Recorder of his county, his mark, brand, and counterbrand, by delivering to said Recorder his mark, cut upon a piece of leather, and his brand and counterbrand burnt upon it, and the same shall be kept in the Recorder's office; a certified copy thereof made by the Recorder, with the seal of his office attached thereto, shall be deemed evidence on the trial of any action in a court of competent jurisdiction, as to the ownership of all animals legally marked or branded as hereinafter provided. The Recorder shall enter in a book to be kept by him for that purpose, a copy of, said marks, brands, and counterbrands, provided that such Recorder shall be satisfied that such brand and counterbrand tendered to him for record is unlike any other mark, brand, or counterbrand in the county, or as far as his knowledge extends, is different from any other in the state. For recording the mark, brand, and counterbrand, and transmitting the same as hereinafter provided, the Recorder shall be entitled to demand and receive two dollars.

Transcript of Marks and Brands.

802. SEC. 3. It shall be the duty of every Recorder in this state to transmit to the Recorders of the adjoining counties, a transcript of all the marks, brands, and counterbrands recorded in his office, which shall be filed by any such

Recorders in their offices, and reference thereto shall be made in every case of application for the record of marks and brands under this Act.

Neglect of Recorder—Penalty.

803. SEC. 4. Any Recorder knowingly and willfully neglecting or refusing to comply with the provisions of this Act, shall forfeit and pay for every such neglect or refusal, any sum not less than twenty-five nor more than one hundred dollars, to be recovered before any Justice of the Peace of said county where such neglect or refusal may occur, by any person suing therefor, together with all costs and damages that may occur by such neglect or refusal.

Stock, When to Be Branded—Evidence.

804. SEC. 5. Every person shall brand his horses and mules, and mark and brand his cattle before they are twelve months old, and mark his sheep, goats, and hogs before they are six months old. On the trial of an action as provided in section two of this Act, to recover possession of any animal which is marked or branded as provided in this Act, the mark and brand shall be primary evidence that the animal belongs to the owner or owners of the mark or brand, and that he, she, or they were entitled to the possession of the said animal at the time of the commencement of the action.

But One Mark and Brand to Be Used.

805. SEC. 6. No person shall use more than one mark, brand, or counterbrand; *provided*, however, this shall not extend to those persons who are the owners of more than one ranch or farm.

Penalty for Using Unrecorded. Brand

806. SEC. 7. If any person shall use any mark, brand, or counterbrand, other than the one recorded by him, except by the consent of the owner of such other mark, brand, or counterbrand, he shall be liable to forfeit and lose to any person suing therefor, the stock so marked or branded with any other than his proper mark or brand recorded by him.

Certain Marks Prohibited.

807. SEC. 8. No person shall be allowed to use a mark by cutting off the ear, or by cutting the ear on both sides to a point; all persons who may have now such marks, shall be obliged to alter them with respect to the cattle, sheep, and hogs they may have to mark, after the passage of this Act.

Mark and Brand Unlawful, When.

808. SEC. 9. No mark, brand, or counterbrand shall be considered as lawful if not recorded as specified in this Act; and all persons selling or disposing of any cattle which are not intended for slaughter, or any horses, mares, mules, jacks, or jennies, shall be required to counterbrand them on the shoulder, or give a written descriptive bill of sale; and any person failing to so counterbrand said animals, or give such written bill of sale, shall lose all benefits of this Act, and all rights to use said brand as evidence in any court under this Act.

Misbranding a Misdemeanor.

809. SEC. 10. Any person, who with intent to defraud, shall willfully misbrand or misbrand any stock not his own, on conviction thereof shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for the period of not less than ten days nor more than one hundred days, or a fine of not less than twenty dollars nor more than two hundred dollars, or by both such fine and imprisonment, as the court may impose. *As amended, Stats. 1887, 88.*

As to constitutionality of Sec. 10, see *State v. Silver*, 9 Nev. 227.

State v. Cordell, 19 Nev. 319.

An Act to prevent the dissemination of contagious diseases among sheep; to provide for the appointment of Sheep Inspectors in the several counties of this state, and to define their duties and compensation.

Approved February 23, 1893, 37.

Inspector of Sheep, Appointed—Bond, Oath, etc.

810. SECTION 1. It is hereby made the duty of the several Boards of County Commissioners in this state, at their first regular meeting in April, eighteen hundred and ninety-three, and annually thereafter, upon the petition of two or more sheep-owners, to appoint an Inspector of Sheep for each of the counties of this state, who shall reside in the county for which he is appointed. Each Inspector so appointed, before entering upon the duties of his office, shall take his oath of office, and give an undertaking to the State of Nevada, for the use of the respective counties thereof, with two or more sureties, to be approved by the Board of County Commissioners, conditional [conditioned] for the faithful performance of his duties, and in such sum as the County Commissioners of the several counties may deem sufficient for the faithful performance of the duties of his office and enforcement of the requirements of this Act.

Powers and Duties of Inspector.

811. SEC. 2. Said Inspector is hereby empowered (and it shall be his duty) to administer oaths and to personally examine all sheep and bands of sheep in his county every year, between the first day of March and the first day of July, and again between the first day of September and the first day of December of each and every year, and also at any time he may be called to do so, by request in writing, of at least five persons owning or controlling any sheep or band of sheep, said persons making a written statement that said sheep (stating their locality and name of owner) are affected with some infectious or contagious disease, to at once proceed to examine said sheep, and if upon examination said sheep are found to be affected or infected with any infectious or contagious disease, and there is imminent or immediate danger of the spreading of said disease, and that it will cause great and irreparable injury to other owners in the vicinity of said infected or affected sheep, the said Inspector, shall forthwith issue his orders quarantining said sheep, and he shall engage a sufficient number of persons to hold said sheep secure from other sheep, and shall immediately dip, or cause to be dipped, all of said sheep found to be so affected. Each Inspector may appoint one or more deputies, not exceeding one for each precinct, for whose acts he shall be responsible, and by any of whom he may perform any act required of him by this Act, except the semi-annual inspections, which shall be made by the Inspector in person; and it shall be the duty of the Inspector to advertise in at least one local paper, if there be one in his county, at his own expense, the names and postoffice address of any and all of his deputies. Any indebtedness incurred under the provisions of this Act, except for which the Inspector should pay, may be recovered by such Inspector in his official capacity, by an action in any court having jurisdiction of the amount. He shall also, at the request of the owner or owners of any sheep about to be brought from any other state or territory into this state, make an examination of such sheep, and if found free from all contagious or infectious disease, certify to such fact, as provided in section three of this Act. *As amended, Stats. 1899, 37.*

Duties of Inspector as to Sheep Coming Into the State—Penalty.

812. SEC. 3. Any person, company, corporation, or association intending to bring, or cause to be brought, sheep from any other state or territory into this state must first obtain from an Inspector of Sheep, duly appointed under this Act, a certificate that said sheep are free from all infectious and contagious disease, before crossing the boundary line of this state; and it shall be the duty of every Inspector, at the request of any person, company, association, or corporation owning or controlling any sheep in his county, or within twenty miles of the line

of such county, upon being tendered the amount of his compensation for other special examinations as herein provided, to with all convenient speed examine any sheep he shall be requested so to examine, and if such sheep be sound and free from all infectious and contagious diseases, and are perfectly sound, to give his written certificate to said applicant, over his official signature, setting forth the soundness and freedom from disease of said sheep, together with the date of such examination, and permit and authorize such applicant to move such sheep to all counties of this state. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than two hundred and fifty dollars.

Permit to Move Sheep—Penalties.

813. SEC. 4. Any person, company, corporation, or association desiring to move his or its sheep which are not sound, or are affected or infected with scab or any infectious or contagious disease, shall obtain from the Inspector a traveling permit; but such permit shall only be granted for the purpose of moving said sheep to some place where they may be treated for said disease, and by such route as the Inspector may designate. Any person, company or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars; and any party injured or damaged by the reason of the moving of said sheep, without such permit, shall be entitled to recover off of said person, company, or corporation, by a civil action, three times the amount of damage, direct and consequential, that said party has actually sustained by reason thereof.

Infectious Diseases in Sheep—Dipping, etc.

814. SEC. 5. Whenever, on examination of any bands or herds of sheep kept or herded in any county of this state, the Inspector shall find such sheep, or any portion of them, afflicted with scab or any infectious or contagious disease, he shall forthwith notify the person in charge of such sheep, in writing, to dip such sheep for said disease within a period of thirty days from such notice, and also, during such period to keep such sheep from contact with other sheep by such means as he may direct; and if the owner or owners, or person or persons in charge of such sheep shall not dip said sheep for said disease, as required by said notice, within said thirty days, or if said diseased sheep shall not be kept from contact with other sheep that are free from said disease, by such means as the said Inspector may specify, the owner or owners, or person or persons controlling said sheep, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than two hundred and fifty dollars; and in case said sheep have not been dipped for said disease, the Inspector shall immediately take possession of said sheep and dip them for said disease, and all expenses incurred in so doing, including a compensation of three dollars per day for every day, or part of a day, in which the Inspector may be engaged in dipping said sheep shall become a lien upon said sheep, and the Inspector shall hold the sheep until the same is paid; or, if it be not paid within ten days after such dipping is completed, he shall collect the same together with the costs and expenses of collection, by advertising and selling said sheep, or so many thereof as may be necessary, in the manner provided by law for the sale of personal property upon execution. If, however, at the expiration of thirty days from such notice as before mentioned, the Inspector finds that said sheep have been dipped for such disease, but are still infected with the same disease, then he shall instruct the owner or controller of said sheep to dip said sheep a second time as soon as possible, but with an interval between the dippings of not less than fifteen nor more than thirty days, and if, upon examination at the end of thirty days further, the Inspector finds that said sheep have been dipped but are still infected, then he shall at once take possession of

said sheep and dip them for said disease, as above specified. If, however, upon examination, he finds that said sheep have not been dipped for said disease, he shall seize said sheep and dip them for said disease, as above specified, and the owner or owners shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than two hundred and fifty dollars; *provided*, no person, company or corporation shall be required to dip a band of ewes in which there are ewes with lambs at any time between the first day of March and the first day of July of any year. *As amended, Stats. 1899, 38.*

Fees of Inspector, How Paid.

815. SEC. 6. The Sheep Inspectors of the several counties of this state shall be entitled to an animal fee of one-half cent per head while making the regular semi-annual inspection required by this Act, and which shall be collected by him at the time of making the first inspection only. He shall also be allowed to collect a fee of three dollars per day for every day or part of a day in which he shall be engaged in making special inspections, or in inspecting sheep for the purpose of granting traveling permits, or certificates of soundness, together with ten cents per mile for the distance necessarily traveled by him in making such inspections; *provided*, that no person, company, or corporation owning or controlling any band or bands of sheep, and holding a certificate of soundness issued by the Inspector of the proper county, within thirty days of such time as such person, company, or corporation shall desire to move said band or bands, shall be required to have a traveling permit for the purpose of moving said sheep from one locality to another within the county in which said sheep are located.

Penalties for Failure of Inspector.

816. SEC. 7. Any Inspector, who shall at any time grant a permit to allow any sheep to travel without first having examined such sheep, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than two hundred and fifty dollars; and for any violation or failure of any Inspector to comply with the requirements of this Act, it is hereby made the duty of the District Attorney of the county where such Inspector may reside to forthwith institute, in the name of the state, an action on his official bond against said Inspector and his sureties for the enforcement herein provided for.

Failure to Report Sheep With Scab Punished.

817. SEC. 8. Any person or persons owning or having under their control any sheep which are infected with scab or other contagious disease for a period of fifteen days, without reporting the same to the Inspector, in writing, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than two hundred and fifty dollars. Upon such notice, the Inspector shall proceed as provided in section five of this Act. Any person, company or corporation violating any of the provisions of this Act shall be liable in a civil action for all damages sustained by any other person, company or corporation in consequence of such violation.

Liabilities of Persons.

818. SEC. 9. In any proceedings arising under the provisions of this Act all persons having any interest in sheep concerning which said proceedings is had, shall be deemed the owners of such sheep, and such owners shall be liable severally and jointly for violations of this Act. Any herder, shepherd or other person in charge of sheep, or who shall willfully refuse to give an Inspector information as to the condition of sheep in his charge shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Prosecutions May Be Made, How.

819. SEC. 10. The provisions of this Act requiring Sheep Inspectors to prosecute for violation of its provisions shall not be so construed as to prevent such prosecutions from being commenced and prosecuted by other persons, as in other criminal actions.

Permit to Move to Be Obtained.

820. SEC. 11. Any person, company, or corporation shall, before moving any sheep from one county to another in this state, first obtain from an Inspector a traveling permit; and any violation of this section shall be deemed a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars.

Certificate for Transportation.

821. SEC. 12. It shall be unlawful for any person, company, or corporation, owning, controlling or managing any railroad car, or other thing used for transportation, to allow any sheep to be carried thereon unless the party in charge of said sheep shall first produce a certificate (which shall not have been issued more than thirty days prior to the date upon which said sheep shall be shipped or transported) from an Inspector appointed under this Act, or of an Act amendatory to this Act, that said sheep are free from scab, scabbies, and infectious and contagious diseases. Any violation of this section shall be deemed a misdemeanor, and any person, company, or corporation violating any of its provisions shall be fined in a sum not less than one hundred nor more than two hundred and fifty dollars.

Penalty for Having in Possession Scabby Sheep.

822. SEC. 13. Any person, company, or corporation, who shall own or have in his or their possession any sheep or band or herd of sheep affected with any contagious or infectious disease, knowing such sheep to be so affected, or after having received notice that said sheep are so affected, who shall permit such sheep to run at large, or who shall keep such sheep where other sheep not affected with such disease shall be exposed to such contagious or infectious disease, or who shall sell, trade, or give away such sheep, without first informing the party to whom the sheep are sold, traded, or given, that such sheep are diseased, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than two hundred dollars nor more than five hundred dollars.

False Charges, How Punished.

823. SEC. 14. If any person or persons shall make complaint against another person, company, or corporation for violation of any of the provisions of this Act, and said information shall prove false, the person so informing shall pay all costs, damages, expenses and disbursements incurred by reason of such complaint.

Act to Be Printed and Distributed.

824. SEC. 15. The State Printer is hereby authorized and directed to print five hundred copies of this Act, in addition to the usual number printed, for the use of county officers as required by law, and the Secretary of State is hereby directed to distribute the same to the several County Assessors of this state as he may deem proper. The said additional copies herein provided for shall be furnished to owners of sheep on application, free of charge.

An Act to prohibit the bringing of diseased animals within this state, and to prevent the selling of diseased animals, poultry, fish, game and other articles, by butchers, merchants and others, to the general public.

Approved March 10, 1891, 34.

Stock Not to Be Brought Into State, When—To Procure Certificate from State Board of Health.

825. SECTION 1. It shall be unlawful for any person, either for himself or as the agent, manager or employee of any person, partnership, company, association or corporation or for any partnership, company, association or corporation, to do or cause to be done any or either of the following prohibited acts, to wit:

First—To bring or drive or cause to be brought or driven into the State of Nevada, any sheep, cattle or horses having any infectious or contagious disease, or which have been herded or brought into contact with any other sheep, cattle or horses having such disease, at any time within ninety days immediately prior to their importation into the State of Nevada.

Second—To bring or drive or cause to be brought or driven into the State of Nevada between the last day of March and the first day of November, in any year, any sheep, cattle or horses from any state, territory or country, situated south of the 36° parallel of north latitude, unless such sheep, cattle or horses have been held at some place north of the said parallel of latitude for the period of at least ninety days immediately preceding their importation into the State of Nevada, or unless the person, partnership, company, association or corporation owning, transporting or having charge of such sheep, cattle or horses, shall procure from the State Board of Health a certificate or bill of health to the effect that said sheep, cattle or horses are all entirely free from every infectious or contagious disease, or shall prove to the satisfaction of said State Board of Health, and secure its certificate that none of such sheep, cattle or horses have been exposed, at any time within the ninety days immediately prior thereto, to any of such diseases. The expense of any inspection connected herewith shall be paid by the owner or owners or managers or transporters of such sheep, cattle or horses. *As amended, Stats. 1895, 90.*

Not to Expose for Sale as Food, What.

826. SEC. 2. No person shall bring, expose or offer for sale, or sell in any city, town or hamlet within this state for human food, any

1. Blown, meagre, diseased or bad meat, poultry or game; or

2. Unsound, diseased or unwholesome fish, fruit, vegetables or other market produce.

Diseased Animal Not to Be Sold.

827. SEC. 3. No person shall bring, expose, or offer for sale, or sell in any city, town or hamlet within this state

1. Any sick or diseased animal, or

2. The flesh of any animal which, when killed, was sick or diseased, or that died a natural or accidental death.

Calf Must Be at Least Four Weeks Old.

828. SEC. 4. No person shall slaughter, expose for sale or sell, or bring or cause to be brought into any city, town or hamlet within this state, for human food, any calf unless it is in good, healthy condition and four weeks of age.

What Deemed Offered for Sale.

829. SEC. 5. Any article or animal that shall be offered or exhibited for sale, in any part of this state, in any market or elsewhere, as though it was intended for sale, shall be deemed offered and exposed for sale, within the intent and meaning of this Act.

Article or Animal Forfeited.

830. SEC. 6. Any person or persons who, in violation of the preceding sec-

tions of this Act, shall bring within this state, city, town or hamlet, slaughter or sell, or expose for sale any article or animal (therein prohibited from sale) which is unfit or unsafe for human food shall forfeit the same to the authorities.

State Board of Health to Issue Certificate, When—Veterinary Surgeon to Be Employed, When—Damages and Method of Recovery.

831. SEC. 7. It is hereby made the duty of the State Board of Health to issue, upon the application of any person, partnership, company, association or corporation, named in this Act, after satisfactory proof and examination of any sheep, cattle or horses found to be entirely free from all the diseases and dangers in this Act specified, to issue to such person, partnership, company, association or corporation, a certificate or bill of health certifying such good health and freedom from dangerous contact of such sheep, cattle or horses as is mentioned in section one of this Act, and it is hereby made the duty of any Sheriff, Constable, policeman or other peace officer or any member of said State Board of Health to forthwith remove, and they and each of them are hereby authorized and empowered, whenever he or they shall become aware of the existence thereof, any of the animals or articles named in section [two] of the Act of which this Act is amendatory, at the expense of the owner or owners thereof, in a manner that will insure safety and protection to the public. It shall be the duty of the State Board of Health, in cases of diseased stock, to employ a competent veterinary surgeon to inspect and investigate such stock. (Sec. 3.) If any person, partnership, company, association or corporation shall bring or cause to be brought into this state, any sheep, cattle or horses, in violation of the provisions of section one of this Act, or shall by false representation procure a certificate of health as provided in section two of this Act, he or they shall be liable to a civil action in any court of competent jurisdiction within the State of Nevada, by the party injured for all damage sustained on account of disease communicated by or from such sheep, cattle or horses, and action therefor is hereby authorized to be brought in the same manner as other suits for damage in a civil action in this state; and the judgment for damages in any such action, shall include the costs of action and such judgment shall be a lien upon all such sheep, cattle or horses, and a writ of attachment may issue in the first instance, and the court rendering such judgment may order the sale of said sheep, cattle or horses, or so many thereof as may be necessary to satisfy said judgment and accruing costs. Such sale shall be conducted as other sales under execution. *As amended, Stats. 1895, 90.*

Penalty for Violation.

832. SEC. 8. Every person violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceed[ing] five hundred dollars, nor less than twenty dollars or by imprisonment in the county jail for a term not more than six months, nor fewer than twenty days. *As amended, Stats. 1895, 90.*

An Act to protect the live stock of this state from disease, and providing a penalty for driving or allowing diseased stock to run at large upon the public lands.

Approved February 19, 1887, 72.

Diseased Stock Prohibited.

833. SECTION 1. It shall be unlawful to drive any horse infected with glanders, or pink eye; any sheep infected with scab, or foot rot; and neat cattle infected with Spanish or Texas or splenic fever, or with pleuro-pneumonia; any hog infected with cholera or trichina, or any of said animals that are infected with or that have been exposed to any of the above diseases whatever, along any highway or traveled road in this state.

To Be Enclosed or Herded.

834. SEC. 2. The owner of any animal or animals so infected or diseased, as

mentioned in section one of this Act, or that has been exposed to any contagious disease, and the person or persons in charge thereof shall keep such animal or animals safely enclosed or securely herded upon lands owned by or held in actual possession by them under the laws of this state by the owner or person in charge of such animal or animals.

Penalty—Entitled to Recover Damages.

835. SEC. 3. Every person who may violate either of the preceding sections of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished therefor by a fine not less than thirty nor exceeding five hundred dollars, or by imprisonment in [the] county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court, and the owner or owners of any animal or animals injured or damaged by any act or omission in violation of the provisions of this Act shall be entitled to recover the amount of damages sustained from the owner or owners of the diseased live stock from which the contagion came, and shall also be entitled to recover the costs of prosecution.

An Act to protect horse growers.

Approved March 9, 1889, 97.

Punishment for Erroneous Pedigree.

836. SECTION 1. Any person who shall sell any stallion within the limits of this state, intended for breeding purposes, and who shall give a false or erroneous written pedigree, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the state prison for a term of not less than one year nor more than five years, and such person so offending shall be liable to the person so purchasing for all damages he may sustain by reason of such false record of pedigree; *provided*, that the provisions of this Act shall not apply to any representation concerning pedigree unless the same has been reduced to writing and signed by the party so making the same.

To Keep Pedigree Posted—Penalty.

837. SEC. 2. Every person who shall keep a stallion for the service of mares shall keep posted in a conspicuous place on or near the stable where such stallion is kept, a full and complete pedigree of such stallion headed by the name by which said stallion is known; *provided*, that in cases where the pedigree is unknown such fact shall be inserted in such notice in lieu of pedigree. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and as a further punishment for the offense the owner or keeper of such horse shall have no legal right to collect any charges made for services of such horse.

An Act authorizing the destruction of wild, unbranded horses, mares and colts over the age of twelve months, found running at large on government range lands.

Approved March 9, 1897, 68.

Horses, etc., May Be Killed—Permission, How Obtained.

838. SECTION 1. Any citizen of the State of Nevada is hereby authorized and it shall be lawful for him to kill any wild, unbranded horse, mare or colt, over the age of twelve months, found running at large on any of the government range lands in the State of Nevada; *provided*, that the person desiring to kill horse, mare or colt, under the provisions of this Act, shall first file with the County Clerk of the county in which he desires to kill horse, mare or colt, a written application directed to the Board of County Commissioners, describing the range

or ranges upon which he intends to kill horse, mare or colt. Said application shall remain upon file at least two weeks before being acted upon by the Board of County Commissioners. The Board of County Commissioners shall have power to grant or refuse the application as the circumstances may warrant, and may at any time revoke the permission under any application.

Misdemeanor.

839. SEC. 2. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty dollars nor more than sixty dollars, or be confined in the county jail for a period not exceeding thirty days or by both such fine and imprisonment.

WILD GAME AND FISH.

An Act amendatory of and supplementary to an Act entitled "An Act to provide for the preservation of fish in the waters of this state," approved March 5, 1877, and to repeal section nine of said Act.

Approved March 19, 1891, 83.

SECTIONS 1 and 2 of above Act of 1877 void by Stats. 1897, 116. Sec. 3 amended, Stats. 1891, 83' and superseded by Sec. 3 below. Sec. 7 is void by Stats. 1897, 116, and the other sections of said Act of 1877 are superseded by Secs. 5, 6, 8 and 10 of this Act of 1891, and Sec. 9 is repealed.

District Attorney to Require Fish Ways to Be Constructed.

840. (SEC. 3). It shall be the duty of the District Attorneys of the different counties of the State of Nevada to require, as far as practicable, all persons, firms, companies, associations, or corporations, who have erected, or may hereafter erect, all dams, water weirs, or other obstruction to the free passage of fish in the rivers, streams, lakes or other waters of the State of Nevada, to construct and keep in repair fish ways, or fish ladders, at all dams, water weirs, or other obstructions, so that at all seasons of the year fish may ascend above such dams, water weirs or other obstructions. *Stats. 1897, 116.*

SECS. 2, 3 and 4, of this Act of 1891, with amendments of 1893, 123, and 1895, 83, are superseded, Stats. 1897, 67, Sec. 845, et seq.

Protection to Owners of Private Ponds.

841. SEC. 5. Every person who shall, in any manner, take or carry away any trout or other fish from any stream, pond or reservoir, belonging to any person or corporation, which stream, pond or reservoir has been stocked with fish by hatching the eggs or spawn, or by placing therein, without the consent of the owner of the land covered by and adjoining such stream, pond or reservoir, or without the consent of the agent of the corporation, if such land belong to a corporation, shall be punished by a fine of not less than two dollars nor more than ten dollars for every fish so taken and carried away, and may be imprisoned in the county jail at the rate of one day for each two dollars of fine so imposed, or by both such fine and imprisonment, and shall also be liable to the owner of such stream, pond or reservoir, in a civil suit, for the full value of all fish so taken or carried away.

Penalty for Employing Indians.

842. SEC. 6. Any person or firm who shall employ any Indian or Indians to catch fish at any time, or place, or manner prohibited by this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than twenty dollars nor more than one hundred dollars, or by imprisonment

in the county jail at the rate of one day for each two dollars of fine so imposed, or by both such fine and imprisonment.

Sec. 7 void, Stats. 1897, 116.

Fish in Private Ponds and for Spawn.

843. SEC. 8. Nothing in this Act shall be construed to prohibit the taking of fish in private ponds, constructed expressly for the raising of fish by the owner thereof; *provided*, that any person wanting spawn for the propagation of fish may take fish from the spawning beds or elsewhere in public waters during the spawning season.

Sec. 9 void, Stats. 1897, 116.

Penalties, How Enforced.

844. SEC. 10. Any person or persons, firm, company, association or corporation, or the managing agent of any firm, company, association or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and in case of conviction, be fined as herein provided, and in addition to the costs now allowed by law, twenty-five dollars liquidated damages shall be entered up against each defendant as costs, and collected in the manner now provided by law for the collection of costs in civil actions, which said sum of twenty-five dollars shall be paid to the party instrumental in securing the arrest and conviction of said defendant.

An Act to provide for the preservation of fish in the waters of the State of Nevada.

Approved March 9, 1897, 67.

Close Season for Lake and River Trout.

845. SECTION 1. It shall not be lawful for any person or persons to take, catch or kill any river or brook trout or land-locked salmon in any of the streams, rivers or other waters within this state between the first day of October and the first day of April of the succeeding year; *provided*, that the close season as to lake trout in all the lakes of this state shall commence on the first day of February and end on the first day of June in each and every year.

Liabilities of Persons Having Fish in Possession.

846. SEC. 2. It shall not be lawful for any person or persons to have in his or their possession, or to buy or sell or offer or expose for sale any river or brook trout or land-locked salmon taken, caught or killed in any river, stream or other waters of this state between the first day of October and the first day of April of the succeeding year, or for any person or persons to have in his or their possession or to buy or sell or offer or expose for sale, any lake trout taken, caught or killed in any lake or other waters of this state between the first day of February and the first day of June of each and every year.

Unlawful Taking of Fish.

847. SEC. 3. It shall not be lawful for any person or persons in the State of Nevada, at any time, to take, catch or kill any river, lake or brook trout or land-locked salmon in any river, stream, lake or other waters within this state with any seine, net, spears or grab-hook, or by means of any set line, set hooks, gill-net, weir-fence, basket, trap, giant powder, or any explosive compound, or with or by means of any other implement or substance, or in any manner, except by hook or line; *provided, however*, that nothing in this Act shall be construed to prohibit the taking of fish in private ponds constructed expressly for raising fish by the owner thereof.

Transportation Companies Liable for Carrying.

848. SEC. 4. It shall not be lawful for any common carrier, express company, railroad company or any other corporation or person to ship or transport or

receive for shipment or transportation any river or brook trout or land-locked salmon, taken, caught or killed in any stream, river or other waters of this state between the first day of October and the first day of April of the succeeding year, or to ship or transport, or to receive for shipment or transportation any lake trout taken, caught or killed in any lake or other waters of this state between the first day of February and the first day of June in each and every year.

Spawns to Be Taken.

849. SEC. 5. It shall not be lawful for any person or persons to take any spawn, or ova from any variety of trout, or from any river, stream or lake or other waters in the State of Nevada, without first having obtained a written permit so to do from the Fish Commissioner of the State of Nevada.

See Sec. 843.

Violation a Misdemeanor.

850. SEC. 6. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty dollars nor exceeding one hundred dollars or by imprisonment in the county jail not exceeding fifty days or by both such fine and imprisonment.

Information of Violation.

851. SEC. 7. Any person giving information which leads to the conviction of any person or persons for violating any of the provisions of this Act, shall, upon the conviction of such person or persons, be entitled to receive one-half of the fine paid or collected from the person or persons upon whom such fine was imposed.

An Act giving authority to the Boards of County Commissioners of the several counties of this state to extend the closed season for fishing in streams and waters of a certain class, and providing for the enforcement of the same.

Approved March 9, 1899, 63.

Board of County Commissioners Authorized to Extend the Closed Season for Fishing.

852. SECTION 1. The Boards of County Commissioners of the several counties of this state, each within its own county, are hereby authorized to extend the closed season for fishing in streams and waters within their counties which now are, or hereafter shall have been, stocked with food fishes by others than the state or its Fish Commissioner, or authorized agent, to such periods as may in their opinion be required for the protection of the fish in said streams and waters, to the end that the supply of fish for food may be permanently increased.

Order to Be Published.

853. SEC. 2. This Act shall be made effective by an order of the Board of County Commissioners published in a newspaper within the county, which order shall name the stream or streams and waters within the county in which the catching of fish is to be restricted, and shall state the period over which the closed season is to extend; *provided*, that no such order shall be effective without such publication for the period of at least one month before the date upon which the order is to take effect; *and further provided*, that no such publication shall be made at an expense to the county of more than three dollars.

Violation of Order—Misdemeanor.

854. SEC. 3. Any person who shall violate the provisions of said order of the Board of County Commissioners shall be guilty of a misdemeanor, and shall be fined not to exceed thirty dollars, or imprisonment in the county jail not to exceed fifteen days for each offense.

An Act to provide for the better enforcement of an Act to amend an Act entitled "An Act to prevent the destruction of fish," approved March second, eighteen hundred and seventy-one; approved January twenty-sixth, eighteen hundred and seventy-seven.

Approved March 2, 1877, 140.

Peace Officers Neglecting to Enforce the Law, Guilty of Misdemeanor.

855. SECTION 1. It shall be the duty of all District Attorneys, Sheriffs, Constables, and all peace officers of this state, to enforce the provisions of the above mentioned Acts, and if any of the officers herein named shall willfully neglect or refuse to prosecute any person or persons within their jurisdiction or bailiwick, who may violate the provisions, or either of them, of said Acts, he or they shall be deemed guilty of misdemeanor in office, and upon conviction thereof shall be fined each in any sum not exceeding five hundred dollars. Any citizen may make complaint, under oath, against any officer above mentioned, for a violation of his duties as herein specified, before the proper Justice of the Peace within the county where such neglect of duty may occur, and said Justice of the Peace shall proceed upon said complaint in the same manner as is provided by law for the trial of other misdemeanors; and the judgment of any Justice of the Peace imposing a fine upon any officer under the provisions of this Act, shall in no case be a bar to any proper proceedings which may be instituted before any Board of County Commissioners or other body or proper tribunal having jurisdiction thereof, for the removal of such officer from office for such misdemeanor.

An Act for the preservation of wild game, and for the preservation of beaver and otter within the State of Nevada, and to repeal all other Acts in relation thereto.

Approved February 27, 1893, 49.

Perpetually Protected Birds.

856. SECTION 1. It shall be unlawful for any person or persons, firm, company, corporation or association, to kill, destroy, wound, trap, snare, injure or in any other manner to catch, or capture, or to pursue with such intent, any sparrow, bluebird, bluejay, martin, thrush, mocking-bird, redbreast, cat-bird, wren, robin, meadow-lark, or humming-bird, or any song bird, except linnets, within this state, or who shall take, injure or destroy the nest or eggs of said before mentioned birds.

Close Season for Birds—Punishment for Violation.

857. SEC. 2. It shall be unlawful for any person or persons, firm, company, corporation or association, at any time between the first day of April, of each and every year, or any year, and before the fifteenth day of September following, to catch; kill, destroy or net, pound, weir, cage, or trap, or to pursue with such intent, any wild goose, wood-duck, teal, mallard, or other ducks, sand-hill crane, brant, swan, plover, curlew, snipe, and mud hens, and between the fifteenth day of March and fifteenth day of September any partridge, pheasant, woodcock, grouse, quail, bittern or yellow hammer, and every person or persons, firm, company, corporation or association, who shall sell, buy, transport, or give away, or offer, or expose for sale, or have in his or their possession any of the birds hereinbefore mentioned, that have been snared, captured, taken, killed, trapped, netted, or pounded, in or by any other means hereinbefore mentioned in this section, shall be guilty of a misdemeanor and punished as in this Act hereinafter specified, and any firm, person or persons, company, corporation or association, who shall destroy, injure, or in any manner disturb the nests or eggs of any of the birds protected by this Act, shall be guilty of a misdemeanor and punished as is provided in this Act. *As amended, Stats. 1895, 55.*

Sage Fowl Protected—Counties Excepted.

858. SEC. 3. It shall be unlawful for any person or persons, firm, company,

corporation, or association to catch, kill, net, pound, weir, cage, trap or destroy, or to pursue with such intent, between the first day of March of each and every year, and before the fifteenth day of August following, any sage cock, hen or chicken within this state, except the counties of Elko, Eureka, Lander, Humboldt and White Pine, the close season for which shall be from the first day of March to the first day of July, and each and every person or persons, firm, company, corporation or association who shall sell, buy, transport or give away, or offer or expose for sale, or have in his or their possession any sage cock, hen or chicken that have been taken, killed, captured, snared, netted, pounded, weired, caged or trapped, contrary to the provisions of this section, shall be guilty of a misdemeanor and punished as hereinafter provided. *As amended, Stats. 1895, 23; 1897, 20; 1899, 68.*

Close Season for Certain Wild Animals—Penalty.

859. SEC. 4. It shall be unlawful for any person or persons, firm, company, corporation or association, to catch, kill, or destroy, or to procure with such intent, at any time after the first day of January and before the first day of September of each year, any deer, antelope, elk, mountain sheep, goat or caribou, or to have in his or their possession, or to sell, buy, transport, give away, or offer or expose for sale any of the animals mentioned in this section during the season when the killing, injuring or pursuing is herein prohibited; and any person or persons, firm, company, corporation or association who shall catch, kill or destroy, or who shall pursue with such intent, or who shall buy, sell, transport, give away or expose for sale, or have in his or their possession any of the animals mentioned in this section, during the season mentioned in this section, shall be deemed guilty of a misdemeanor and punished as hereinafter provided. *As amended, Stats. 1895, 35.*

Close Season for Certain Fur Animals.

860. SEC. 5. It shall be unlawful for any person or persons, firm, company, corporation, or association, to catch, kill, destroy, trap, net, pound, weir, or cage, any beaver or otter within this state before the first day of April, in the year A. D. one thousand eight hundred and ninety-seven (1897), and each and every person, firm, company, corporation, or association, who shall sell, buy, transport, or give away, or offer or expose for sale, or have in his or their possession, any beaver or otter, as mentioned in this section, shall be guilty of a misdemeanor and punished as hereinafter provided.

Exceptions for Scientific Purposes.

861. SEC. 6. It shall be unlawful for any person or persons, firm, company, corporation, or association, within this state, to have in his or their possession, or to sell, buy, transport, or give away, or offer or expose for sale, or purchase from any person whomsoever, either Indians or other persons, any of the birds, wild game, or animals, mentioned in this Act, during the seasons wherein the killing, injuring, pursuing, netting, trapping, pounding, weiring, caging, selling, buying, transporting, giving away, offering or exposing for sale, or having in his or their possession, is herein prohibited; *provided*, that nothing in this Act shall be so construed as to prohibit any person or persons, firm, company, corporation, or association, taking any bird, fowl, or animal mentioned in this Act, at any time for scientific purposes.

Penalties for Violation.

862. SEC. 7. Any person or persons, firm, company, corporation, or association, or common carrier, or the agent of any such firm, company, corporation, or association, or common carrier, violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction be fined in any sum not less than twenty-five (\$25) dollars, nor more than two hundred (\$200) dollars, or imprisonment in the county jail of the county in which said conviction is had,

for any term not exceeding six months, or by both such fine and imprisonment, and in addition to the costs now allowed by law on criminal prosecution, twenty-five (\$25) dollars liquidated damages, shall be entered up as costs against each defendant, and collected in the manner now provided by law for the collection of costs in civil actions, which said sum of twenty-five (\$25) dollars shall be paid to the party instrumental in securing the arrest and conviction of said defendant.

Duties of Peace Officers in Relation To.

863. SEC. 8. It shall be the duty of the Sheriff and his deputies, Constable and his deputies, District Attorneys and all other peace officers in this state, upon receiving information from any person, that any of the provisions of this Act have been violated, to immediately institute proceedings in the proper court against the person or persons thus complained of, and prosecute the same with reasonable diligence to final judgment, and any peace officer refusing to make complaint or institute proceedings as herein provided, shall be guilty of a misdemeanor in office, and fined in any sum not exceeding twenty-five (\$25) dollars.

Repeal.

864. SEC. 9. All Acts and parts of Acts heretofore passed and now in force in regard to the protection and preservation of wild game are hereby repealed.

An Act to prevent the shipment of wild game from this state.

Approved February 16, 1899, 21.

Penalty.

865. SECTION 1. Every railroad company, express company, transportation company, or other common carrier, their officers, agents and servants, and every other person who shall transport, carry or take out of this state, or who shall receive for the purpose of transporting from the state, any deer, buck, doe or fawn or any mountain sheep or antelope, or any quail, sage chicken, prairie chicken, grouse, dove, wild duck or goose, except for purposes of propagation, shall be guilty of a misdemeanor. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty (\$20) dollars nor more than five hundred (\$500) dollars or be imprisoned in the county jail not less than ten nor more than ninety days or by both such fine and imprisonment.

CORPORATIONS.

An Act to provide for the formation of corporations for certain purposes.

Approved March 10, 1865, 359.

Purposes for Which Corporations May Be Formed—Proviso.

866. SECTION 1. Corporations for manufacturing, mining, milling, ditching, mechanical, chemical, building, navigation, transportation, farming, banking, hotel and inn-keeping, and ore reduction purposes, or for the purpose of engaging in any other species of trade, business or commerce, foreign or domestic, may be formed according to the provisions of this Act, such corporations, and the members thereof, being subject to all the conditions and liabilities herein imposed, and to none others; *provided*, that nothing in this section shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or currency within this state, except the federal currency and the notes of banks authorized under the laws of the Congress of the United

States; nor shall bank notes or paper of any kind be permitted to circulate as money in this state, other than the federal currency and the notes of banks authorized by the laws of the Congress of the United States. *As amended, Stats. 1866, 165; 1869, 95.*

Formation of Corporation, How Accomplished.

867. SEC. 2. Any three or more persons, who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some person competent to take the acknowledgment of deeds, and file and have recorded in a book provided for that purpose, in the office of the Clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy, under the hand of the Clerk and the seal of said county, in the office of the Secretary of State, a certificate, in which shall be stated the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence—not to exceed fifty years—the number of shares of which the capital stock shall consist, the number of Trustees and their names, who shall manage the concerns of the company for the first six months, and the name of the city, town, or locality, and county, in which the principal place of business of the company is to be located.

Evidence of Incorporation.

868. SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this Act, and certified by the County Clerk of the county in which it is filed, or his deputy, or by the Secretary of State, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

Powers and Privileges of Corporations.

869. SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic, in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power:

First—To sue and be sued in any court having competent jurisdiction.

Second—To make and use a common seal, and to alter the same at pleasure.

Third—To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

Fourth—To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no Trustee shall be removed from office unless by a vote of a majority of the stockholders, as hereinafter provided.

Fifth—To purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require.

Sixth—To make by-laws not inconsistent with the constitution of this state, or Constitution of the United States.

Seventh—The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in its articles of incorporation.

Every corporation in this state shall have the power, whenever at any assessment sale of the stock of said corporation no person will take the stock and pay the assessment thereon, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this state which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the

same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase, a majority of the remaining shares of stock in said incorporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting.

1. CORPORATION—CONTRACTS WITH, BOUND BY THE LIMITS OF ITS AUTHORITY. Every person who enters into a contract with a corporation is bound, at his peril, to take notice of the legal limits of the capacity of such corporation to contract. *George v. N. C. R. Co.*, 22 Nev. 228.

CORPORATION, ACTS OF IN EXCESS OF AUTHORITY. If an act of a corporation is in excess of its chartered purposes, such act is outside of the powers delegated to its agent. *Id.*

2. CORPORATION TRUSTEES CAN ONLY ACT AS A BOARD. The Trustees of a corporation can only bind it when they are together as a board, acting as such. *Hillyer v. Overman M. Co.*, 6 Nev. 51.

UNAUTHORIZED STATEMENTS OF OFFICERS. *Id.*

3. POWER OF SECRETARY TO AFFIX CORPORATE SEAL. The Secretary of a corporation is the proper custodian of the corporate seal, and when the Secretary affixes it to a mortgage, or other instrument, the presumption is, he did it by direction of the corporation, and it devolves upon those who dispute the validity of the deed, to prove that he acted without authority. *Evans v. Leete*, 11 Nev. 194.

4. CORPORATION—CONTRACT OF PROMOTERS—RATIFICATION. The responsibility of a contract, made by promoters of a corporation, if it be within the corporate powers of the corporation, may, when the corporation is organized, be expressly or impliedly assumed or ratified and thus made a valid obligation of the corporation. *Alexander v. Winters*, 23 Nev. 475.

5. CORPORATIONS—CONTRACTS OF OFFICERS—WHEN NOT RESPONSIBLE FOR. A corporation cannot be held responsible for a contract of its officers, or agents, unless it affirmatively appears that such officers or agents were authorized to make the contract, or that the corporation received the benefits derived from the contract. *Edwards v. Carson W. Co.* 21 Nev. 469.

6. IMPLIED POWERS—AUTHORITY OF OFFICERS—RATIFICATION BY TRUSTEE—RESPONSIBILITY. *Id.*

7. MINING CORPORATION—ULTRA VIRES—CONSTRUCTION OF A TUNNEL—INCIDENTAL POWER—ADVANCING MONEY. A contract made by a mining corporation to advance a specified sum of money for the construction of a tunnel to drain its mine, etc., is not *ultra vires*. Such contracts come within the implied or incidental powers of the corporation. *Sutro T. Co. v. S. B. M. Co.*, 19 Nev. 121.

8. BY-LAWS OF CORPORATION. Binding, although irregularly adopted, when treated as by-laws by long use. *State v. Curtis*, 9 Nev. 325.

9. CONTRACT CREATED BY ARTICLES OF INCORPORATION. Liable for damage to stockholder. *O'Connor v. North Truckee Ditch Co.*, 17 Nev. 245.

Corporate Powers to Be Exercised by Trustees—Oath of Trustees, Time of Election and Manner of Conducting Same—Duty of District Judge, etc.

870. SEC. 5. The corporate powers of the corporation shall be exercised by a board of not less than three Trustees—who shall be stockholders in the company—who shall, before entering upon the duties of their office respectively, take and subscribe to an oath, as prescribed by the laws of this state, and who shall, after the expiration of the term of the Trustees first elected, be annually elected by the stockholders, at such times and place within the state, and upon such notice, and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and every stockholder shall have the right to vote in person or by proxy, the number of shares owned by him for as many persons as there are Trustees to be elected, or to cumulate said shares and give one candidate as many votes as the number of Trustees multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such Trustees shall not be elected in any other manner; and the person or persons receiving the greatest number of votes shall be Trustee or Trustees. Whenever any

vacancy shall happen among the Trustees by death, resignation, or otherwise, except by removal and the election of his successor, as herein provided, it shall be filled by appointment of the Board of Trustees. On petition of the stockholders holding the majority of the stock actually issued by any corporation formed under this Act, to the District Judge of the district where said corporation has its actual place of business, verified by the signers, to the effect that they are severally the holders of to the number of shares set opposite their signatures to the foregoing petition, the District Judge shall issue his notice to the stockholders of said company that a meeting of the stockholders will be held at the court room of the district court, in the county in which is said principal place of business, stating the time, not less than five, nor more than ten, days after the first publication of said notice, and the object to be taken into consideration, the removal of officers of said company; which notice, signed by the said District Judge, shall be published daily, in a daily newspaper published in said county, for at least five days before the time for the meeting; or, if there be no daily newspaper published in said county, then in such manner as the District Judge shall direct. At the time appointed by said notice, the said District Judge shall appoint a Secretary of the meeting, and shall thereupon hear the proofs of those claiming to be stockholders in said corporation; and only those showing a right to vote, or their proxies, shall take part in the further proceedings. Said Judge shall decide who are entitled to vote, in a summary way, and his decision shall be final. If it appears at the time appointed, or within one hour thereafter, holders of less than one-half the whole number of shares actually issued, or their proxies, are present, the meeting shall be dissolved; but, if the holders of more than one-half of the shares actually issued, or their proxies, are present, they shall proceed to vote, the Secretary calling the roll, which he shall prepare by setting down the names of persons held to be entitled to vote, and the number of shares held by each, and such persons voting yea or nay, as the case may be. The Secretary shall enter the same upon his list, and, when he has added up the list and stated the result, he shall sign the same and hand it to the Judge, who shall declare the result. If the result of the vote is that the holders of a majority of all the shares of the company actually issued, or their proxies, are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the Judge, who shall collect the ballots and deliver them to the Secretary, who shall count the same in open session, and, having stated the result of the count, in writing, shall sign the same and hand it to the Judge, who shall announce the result to the meeting. The Judge shall thereupon issue to each person chosen a certificate, stating that, from the date of such meeting until the next annual election, unless removed under the provisions hereof, he is entitled to exercise and fill the office to which he is chosen; and shall indorse upon, or annex to, said petition a report of the proceedings of said meeting; and an order, requiring that all books, papers, and all property and effects of said corporation be immediately delivered to the officers-elect, and shall sign the same and file it with the Clerk of his court; and thereafter any disobedience to said order may be punished as other contempts of court, and obedience thereto may be enforced by the court of said district. The District Judge shall preside at said meeting, and put to vote such proper motions as he may be requested to submit to the meeting. In deciding any controverted question that may arise, he shall have the power to administer oaths and take testimony, either orally or by ex parte affidavits. For all the services in these proceedings the County Clerk shall receive twenty dollars. *As amended, Stats. 1875, 68; 1881, 34.*

1. ANNUAL ELECTION OF TRUSTEES—RIGHTS OF STOCKHOLDERS. The legal right to have an annual election of Trustees of a corporation as required by law (Stats. 1875, 68) belongs to any stockholder, independent of the number of shares of stock owned by him. *Sears v. Wright*, 10 Nev. 167.

2. **TERM OF FIRST BOARD OF MINING CORPORATION—TIME OF ELECTION OF TRUSTEES—NEGLECT OF ONE DUTY NO EXCUSE FOR NEGLECT OF ANOTHER.** *State v. Lady Bryan M. Co.*, 4 Nev. 400.
 3. **STOCKHOLDER IN CORPORATION.** Under the statutes of this state a person who "holds" shares of stock, issued in his name, is recognized as a stockholder as well as one who "owns" them. *Rankin v. Leete*, 16 Nev. 242.
 4. **WHEN TRUSTEES OF CORPORATION CEASE TO BE OFFICERS.** *Orr Ditch Co. v. Reno Water Co.*, 17 Nev. 186.
 5. **MEETING OF STOCKHOLDERS—HOW CALLED.** Where the by-laws of a corporation provide that meetings of the stockholders shall be called by the Trustees: *Held*, that the action of the Board of Trustees is necessary in order to convene a legal meeting, and that the President of the corporation has no authority to call such a meeting. *State v. Pettineli*, 10 Nev. 141.
- ELECTION OF TRUSTEES—WHEN NOT LEGAL.** At a meeting of all the stockholders, where only a portion of the stockholders participated in the election of trustees; where the President, although present, did not preside; where no President *pro tempore* was chosen, and where no person who participated in the proceedings was authorized to receive the ballots or declare the result: *Held*, that there was no legal election. *Id.*

Failure of Election or Qualification of Trustees—Procedure.

871. SEC. 6. If it shall happen, at any time, that an election of Trustees shall not be held on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful, on any other day, to hold an election for Trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the Trustees shall be valid and binding on the company until their successors shall be elected. Whenever a majority of any newly elected Board of Trustees shall fail to qualify and file in the office of the company their oath of office, within thirty days from the day of their election, it shall be the duty of any officer of the company upon the request of owners in said company representing not less than one-third of the capital stock of the corporation owned in the company, to call a meeting of the stockholders of said company, which meeting, when assembled, shall have power to elect Trustees to supply the place of those who have failed to qualify; but such Trustees may qualify and enter upon the duties of their office at any time after the said thirty days, if such meeting for a new election shall not have been called. *As amended, Stats. 1866, 79.*

Quorum.

872. SEC. 7. A majority of the whole number of Trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

First Meeting of Trustees.

873. SEC. 8. The first meeting of the Trustees shall be called by a notice signed by one or more of the persons named Trustees in the certificate, setting forth the time and place of the meeting; which notice shall be either delivered personally to each Trustee, or published at least twenty days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto in the state.

Stock Personal Estate—Transfer Of.

874. SEC. 9. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his or her attorney, or legal representative; but such transfer shall not be valid except between the parties thereto, until the same shall have been so entered upon the books of the corporation as to show the names of the parties

by and to whom transferred, the number or designation of the shares, and the date of the transfer. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this state, are held or owned by a married woman, such shares may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a *femme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding, without the signature of her husband, the same as if she were unmarried.

MINING STOCK, LEGAL TITLE TO—HOW ACQUIRED. The legal title to mining stock, except as between the parties, can only be acquired by transfer upon the books of the corporation. *State v. Pettinelli*, 10 Nev. 141.

Duties and Powers of Corporation Trustees.

875. SEC. 10. The stockholders of any corporation formed under this Act, may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the Trustees shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments, or installments, as they may deem proper. The Trustees shall also have power, at such times and in such amount, as they may from time to time deem the interests of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided. Notice of each assessment shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is situated, and if no paper be published in either of such counties, then in the newspaper published nearest to the said principal place of business in the state. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessments upon all the shares held by him, her or them, together with all costs of advertising and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed; and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder. *As amended, Stats. 1891, 71.*

1. **STOCKHOLDER OF CORPORATION—LIABILITY AS GARNISHEE—UNPAID SUBSCRIPTIONS.** A stockholder in a banking corporation cannot be held liable for his unpaid and uncalled subscriptions, in an action at law against him as the garnishee of the principal debtor. *McKelvey v. Crockett*, 18 Nev. 238.
2. **BANK CORPORATION—SUBSCRIPTION TO STOCK PAYABLE UPON CALL—SUIT BY CREDITOR TO ENFORCE PAYMENT OF.** Where subscriptions to the capital stock of a corporation are payable upon the call of the company, it is not necessary that a creditor of such corporation must, before instituting suit to compel the payment of such subscriptions, make an effort to compel the corporation to make the call. *Thompson v. Reno Savings Bank*, 19 Nev. 171.
3. **CORPORATION OF BANK—UNPAID SUBSCRIPTIONS—TRUST FUND.** The unpaid subscriptions to the capital stock of a bank corporation is a trust fund for the benefit of the general creditors of the corporation. *Thompson v. Lake*, 19 Nev. 103.
4. **CALL FOR ASSESSMENT NOT NECESSARY—SUIT IN EQUITY—IMPLIED AGREEMENT.** *Thompson v. Crockett*, 19 Nev. 242.

5. STOCKHOLDER'S LIABILITY FOR UNPAID SUBSCRIPTION—ILLEGALITY OF ORGANIZATION No DEFENSE. *ROSS v. Bank of Gold Hill*, 20 Nev. 191.

Stock Held by Executors.

876. SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

Pledge of Stocks.

877. SEC. 12. Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

Capital Stock Not to Be Reduced, etc.—Proviso.

878. SEC. 13. It shall not be lawful for the Trustees to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this Act; and in case of any violation of the provisions of this section, the Trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the Board of Trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn, or reduced, or paid out; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter. *As amended, Stats. 1866, 188.*

Debts Not to Exceed Amount of Stock Paid in—Trustees Liable for Excess.

879. SEC. 14. The total amount of debts of the corporation shall not at any time exceed the amount of capital stock actually paid in, and in case of an excess, the Trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the Board of Trustees at the time, and except those not present, when the same did happen, shall, in their individual and private capacities, be liable, jointly and severally, to the said corporation, and in event of dissolution, to any of the creditors thereof, for the full amount of such excess.

Not to Issue Bills, etc.

880. SEC. 16. No corporation organized under this Act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money.

Trustees Shall Keep Book for Names of Members.

881. SEC. 16. It shall be the duty of the Trustees of every company incorporated under this Act to keep a book, containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares; which book, and all other books of the company, during the usual business hours of the day, on every day except Sunday and the legal holidays, shall be open for the inspection of stockholders of the company, at the office of the principal place of business of the company; and any stockholder or creditor of the company may have the right to demand and receive from the Clerk, or other officer having the charge of such, a certified copy of any entry therein, or to demand and receive from any Clerk, or officer, a certified copy of any paper placed on file in the office of the company, and such book or certified copy shall be presumptive evidence of the facts

therein stated, in any action or proceeding against the company, or any one or more of the stockholders.

Penalty for Making False Entry.

882. SEC. 17. If at any time the Clerk, or other officer having charge of such book, shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company, shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of not less than one hundred dollars, nor more than one thousand dollars, and all damages resulting therefrom to be recovered in an action for debt in any court having competent jurisdiction in the county in which the principal place of business of the corporation is located.

Change in Capital Stock.

883. SEC. 18. Any company incorporated under this Act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purpose of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

Increase or Decrease of Amount of Stock, How Made.

884. SEC. 19. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the Trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county, then in some newspaper nearest thereto in the state, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of the capital stock.

Certificate to Be Made.

885. SEC. 20. If at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, and signed and verified by the affidavit of the Chairman and Secretary of the meeting, certified to by a majority of the Trustees, and filed as required by the second section of this Act; and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

Powers of Trustees After Dissolution of Company.

886. SEC. 21. Upon the dissolution of any corporation formed under this Act, the Trustees at the time of the dissolution shall be Trustees of the creditors and stockholders of the corporation dissolved, and shall have power and authority to sue for and recover the debts and property of the corporation, by the name of Trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

Dissolution, How Effected.

887. SEC. 22. Any corporation formed under this Act may dissolve and disincorporate itself by presenting to the District Judge of the district in which the

office of the company is located a petition to that effect, accompanied by a certificate of its proper officers setting forth that at a meeting of the stockholders, called for the purpose, it was decided by a vote of a majority of the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the Clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time or place appointed, or at any other time or place to which it may be postponed by the Judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Removal of Place of Business.

888. SEC. 23. Any corporation desiring at any time to remove its principal place of business into some other county in the state, shall file in the office of the County Clerk of such county a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation heretofore formed under this Act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation; *provided*, that within six months from the passage of this Act such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest to the city, town, or locality where the principal place of business of such corporation has in fact been located, designating the city, town or locality, and county where its principal place of business shall be located. On compliance with the provisions of this section, in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality and county in the state.

Capital Stock Consisting of Mining Ground.

889. SEC. 24. In corporations already formed, or which may hereafter be formed under this Act, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be, or has been, formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may, by deed, deed of trust, or other instrument, vest, or have vested in such corporation, for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied, or which may hereafter be levied, by the Board of Trustees of such corporation, be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; *provided*, that the greater portion of said amount of capital stock shall have been subscribed; *and, provided further*, that this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes, as provided in

this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or expressed contract.

1. **FULL NUMBER OF SHARES ISSUED.** When a corporation has issued stock to the full number of shares which, by its charter or Act of incorporation it is authorized to issue, no court can rightfully direct the issuance of other shares of stock unless some of the shares issued were void. *Smith v. North American Co.*, 1 Nev. 423.
2. **WHO ENTITLED TO STOCK.** When Trustees of a mining company issue stock to the party equitably entitled, the court will not compel them to issue to another, especially when that other can only show his claim by establishing his own fraud. *O'Meara v. North Am. M. Co.*, 2 Nev. 113.

Governed by District Mining Laws.

890. SEC. 25. All corporations already formed, or which may hereafter be formed under this Act for mining purposes, shall be governed by the mining laws of the district where the mine is located; *provided*, that the amount of money so expended in incorporating said company, and the procuring of the necessary books for said corporation, shall be deemed in law as so much money expended in working the claim.

Trustees to Convey Property on Dissolution of Corporation.

891. SEC. 26. When any mining incorporation, holding or working any mine or mines in this state, shall disincorporate under the provisions of this Act, the Board of Trustees of said corporation shall convey by deed to the stockholders of said company, all mines and other property of said corporation, in proportion to the amount of stock each stockholder shall hold in the mine or mines, and other property owned by said corporation, which deed shall be recorded in the office of the County Recorder of the county in which the mine is located.

Acts Repealed.

892. SEC. 27. An Act entitled "An Act to provide for the formation of corporations for certain purposes," approved December twentieth, one thousand eight hundred and sixty-two; also, an Act amendatory of and supplementary to an Act entitled "An Act to provide for the formation of corporations for certain purposes," approved December twentieth, one thousand eight hundred and sixty-two; approved February nineteenth, one thousand eight hundred and sixty-four, are hereby repealed.

Corporations May Become Stockholders, etc.

893. SEC. 28. Corporations formed under the provisions of this Act for mining, milling, or ore reduction purposes, may subscribe to and become stockholders in any corporation, company, or association now formed, or which may hereafter be formed, for the purpose of constructing any tunnel, shaft, or other work, which may be calculated to aid or facilitate the exploration, development, or working of any mine or mining ground in this state; and any corporation so becoming a stockholder therein shall, in proportion to its interest, be subject to all the liabilities, and entitled to all the rights and privileges of an individual stockholder. *As amended, Stats. 1867, 44.*

894. *Below are references to several Acts, which, although in force, are not of general interest, and are of so little importance that it was deemed best not to reprint them:*

1. Provisions of above Act made applicable to corporations formed prior to its passage, *Stats. 1866, 46.*
2. Act validating defective certificate, *Stats. 1865, 388.*
3. Act providing for consolidation of domestic and certain foreign corporations, *Stats. 1883, 121.*
4. Act concerning banking associations formed in this state under the laws of the United States, *Stats. 1865, 353.*

5. Act to provide for the formation of corporations for the accumulation and investment of funds and savings, Stats. 1869, 148.
6. Act to promote the introduction and use of steam power for transportation purposes on common roads in this state, Stats. 1871, 62.
7. Act to provide for the incorporation of wire suspension tramway companies, Stats. 1871, 133.
8. Act to regulate rafting and running of timber and wood on the rivers in the State of Nevada, Stats 1896, 198.
9. Act to provide for the incorporation of religious, charitable, literary, scientific and other associations, Stats. 1867, 70. Sec. 2 amended, Stats. 1873, 102.
10. Act for the incorporation of hospitals or asylums in certain cases, Stats. 1867, 79.
11. Act to incorporate rural cemetery associations, Stats. 1865, 176. Sec. 1 amended, Stats. 1865, 407.
12. Act to provide for the organization and maintenance of historic, scientific and other literary societies, Stats. 1865, 409. Sec. 1 amended, Stats. 1893, 116.
13. Act for the incorporation of the Protestant Episcopal churches, Stats. 1862, 69. Sec. 4 amended, Stats. 1869, 76.
14. Act to incorporate the Grand Lodge of Free and Accepted Masons, the Grand Lodge of the Independent Order of Odd Fellows, and their subordinate lodges, Stats. 1865, 188. Secs. 1 and 4 amended, Stats. 1867, 102.
15. Act to extend provisions of above, Stats. 1877, 169.
16. Act to incorporate the Grand Lodge of Knights of Pythias and their subordinate lodges Stats. 1883, 26.
17. Act to incorporate the Ancient Order of Hibernians, Stats. 1873, 91.
18. Act to provide for the incorporation of the Grand Lodge of the Independent Order of Good Templars, and their subordinate lodges, Stats. 1869, 66.
19. Act to incorporate the Grand Lodge of Benevolent Bachelor Brothers and their subordinate lodges, Stats. 1893, 79.

An Act to enable corporations to divide their capital stock into shares of lesser denomination.

Approved February 21, 1899, 25.

Dividing Capital Stock.

895. SECTION 1. All corporations organized and existing under the laws of this state, desiring to divide the capital stock of the corporation into shares of smaller denomination than originally issued, may do so by a majority vote of the Trustees of the corporation at any regular or called meeting of the Trustees, and may issue the stock of such corporation in accordance therewith, after having filed in the office of the Secretary of State a certificate setting forth the amount or denomination in which they propose to divide such shares, verified by the affidavit of a majority of such Trustees.

Not to Change Amount of Capital Stock.

896. SEC. 2. This Act shall not be construed as enabling any corporation to change the amount of its capital stock.

An Act to require foreign corporations to furnish evidence of their incorporation, and corporate name.

Approved March 3, 1869, 115.

Every Company Incorporated in Any Other State Must File Certificate—May Be Introduced in Evidence.

897. SECTION 1. Every incorporated company or association created and existing under the laws of any other state, or of any foreign government, shall file in the office of the County Recorder of each county in this state, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the Act or law by

which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the County Recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof. *As amended, Stats. 1877, 57.*

Penalty for Failure to Comply—Proviso.

898. SEC. 2. Any person or persons who shall act as the managing agent or Superintendent of any such corporation, in conducting or carrying on any business of such corporation, in any of the counties of this state, without any such certificate having been filed as required by section one of this Act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding six months; *provided*, that in all actions against such corporations, associations, or companies which have neglected to file the proper certificate or Act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such. *As amended, Stats. 1877, 57.*

1. FOREIGN CORPORATIONS—ABOVE ACT CONSTRUED. The intention of the Act requiring all foreign corporations to file, in the office of the County Recorder, an authenticated copy of their certificate, or Act of incorporation, etc., was obviously to compel such corporations, when doing business in this state, to furnish easily accessible evidence of their existence, and of the names of their officers. *Evans v. Lee*, 11 Nev. 194.

• IDEM. Where a paper was filed by the corporation, under said Act: *Held*, that the corporation, and those claiming under it, are precluded from objecting to the contents of the paper, as at least *prima facie* evidence, upon the ground that it does not come up to the requirements of the law. *Id.*

IDEM—SEAL. *Held*, that as the paper on file bears the impression of the corporate seal, *prima facie*, it proves the seal of the corporation. *Id.*

2. FOREIGN CORPORATIONS. Powers of corporation or of its officers under the laws of the state where created will be inquired into by the courts of this state if necessary to determine controversies arising here. *Curtis v. McCullough*, 3 Nev. 202; *Ryan v. Cronan*, 23 Nev. 437; *Corey v. Curtis*, 9 Nev. 325.

3. FOREIGN CORPORATIONS MAY HOLD LAND. *Whitman M. Co. v. Baker*, 3 Nev. 386.

An Act to require foreign corporations and associations to name and keep agents in this state upon whom all legal process may be served.

Approved February 25, 1889, 47.

Agent to Reside in the State.

899. SECTION 1. Every incorporated company or association created and existing under the laws of any other state, or territory, or foreign government, or the government of the United States, owning property or doing business in this state, shall appoint and keep in this state an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the Secretary of State, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

Serving of Process.

900. SEC. 2. Any and all legal process may be served upon such company, by delivering to such agent personally, a copy of such process, which shall be legal and valid.

When No Agent, Service to Be Made on Secretary of State.

901. SEC. 3. If any such company shall fail to appoint such agent, or fail to file such certificate for ninety days after the passage of this Act, or for ten days after a vacancy occurs in such agency, then it shall be lawful to serve such company with any and all legal process by delivering a copy to the Secretary of State, and such service shall be valid to all intents and purposes; *provided*, that in all cases of service under this Act, the defendant shall have forty days in which to answer or plead. This Act shall be as giving an additional mode and manner of serving process and as not affecting the validity of any service of process hereafter made, which would be valid under any statute now in force.

STATUTE CONSTRUED. Brooks v. Nev. Nickel Syndicate, 24 Nev.

An Act to grant certain privileges to gas companies and others.

Approved February 26, 1877, 94.

May Erect Buildings and Lay Pipes.

902. SECTION 1. Any person, persons, or company desiring to supply the inhabitants of any city or town in this state with illuminating gas, it shall have the license and authority to erect within the limits of such city or town the necessary buildings, works and machinery for the manufacture or production of such gas; to make the necessary excavations in the public streets of such city or town, for the purpose of laying gas pipes therein; to lay all necessary pipes, and to reopen such excavations at any time for replacement, repair, or examination of the pipes; *provided*, that no street shall be obstructed to an unnecessary degree, or for an unnecessary period of time, by any work as aforesaid.

An Act to license and regulate insurance business in this state.

Approved February 23, 1881, 50.

Insurance Companies Prohibited from Doing Business Without a Certificate.

903. SECTION 1. No company, corporation, or association organized under the laws of this state, or any other state, or government, or firm, or individual, shall be permitted to transact an insurance business in this state, without a certificate from the State Controller authorizing and permitting the transaction of such business.

Insurance Companies Under Laws of This State.

904. SEC. 2. Corporations may be formed under the general laws of this state for the transaction of insurance business, but no such corporation shall be permitted to assume any risk as insurer, unless the same shall have at least five Directors, who shall be residents and property owners in this state, and stockholders in the corporation; nor until such corporation shall have a paid up, unimpaired cash capital equal to two hundred thousand dollars, in United States gold coin, which shall be invested in this state in state or United States bonds; bonds and mortgages on first-class, otherwise unincumbered, real estate, the market value of which shall be at least double the amount invested in or loaned thereon; bonds of any city or county in this state, the issuance of which was duly authorized by law; bonds of any railroad, wagon road, ditch, or canal incorporation or association; *provided*, that such bonds or securities shall at no time be estimated as assets of such corporation at more than their actual cash market value; and nothing in this Act shall be construed to permit any investment in mining stock.

Loans Prohibited.

905. SEC. 3. No loan shall be made to any stockholder by any insurance corporation formed under the laws of this state, nor shall any stockholder be

interested in any way in any loan, pledge, security, or property of any insurance company organized under the laws of this state, except as stockholder in said company, and any property claimed as belonging to such company, standing in the name of any person or persons, shall not be admitted as an asset of such company.

Terms of Insurers Limited.

906. SEC. 4. No association, firm, or individual, whose principal office shall be in this state, shall be permitted to transact business as insurer on terms more favorable than are defined in section two of this Act.

Controller to Make Examinations—Notice to Repair Capital—Revoke Certificate and Penalties.

907. SEC. 5. The Controller of State is hereby authorized and required, upon the receipt of a written request, signed by three citizens of this state, or whenever, from any cause, he shall deem it necessary, to make a thorough examination of the books, accounts, securities, and all property belonging to any company incorporated under the laws of this state, and if he does not find capital paid up to the amount of two hundred thousand dollars, or if he shall find the capital impaired, he shall give notice to such company to immediately repair its capital, and shall refuse or revoke his certificate of authority to such company to do business in this state; and if any company shall refuse to permit such examination, the Controller shall refuse or revoke his certificate of authority to such company. If after such notice, refusal, or revocation of his certificate by the Controller, such company shall continue to make contracts and issue policies, the officers, or any officer, agent, or other person so violating the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined the sum of five hundred dollars for each offense committed after the receipt of such notice, and in default of payment of such fine shall be imprisoned in the county jail of the county in which the offense was committed for a period not exceeding six months, or until such fine shall be paid.

Assessment on Stock.

908. SEC. 6. For the purpose of repairing the capital of insurance companies or corporations, assessments may be levied upon the capital stock thereof, and collected as now provided by law for levying and collecting assessments upon the capital stock of other corporations in this state.

Controller to Have Access to Books, etc.—Duties of Companies in Facilitating the Examination.

909. SEC. 7. For the purpose of examination, the Controller shall have free access to all books, papers, and property of any insurance company formed under the laws of this state, and shall thoroughly inspect and examine the same, as far as necessary to determine the financial condition and ability of such company to fulfill its engagements, and also to ascertain whether it has complied with all the requirements of this Act. And it shall be the duty of such company to permit its books to be opened to the inspection of the Controller, and otherwise to facilitate such examination. The Controller shall have power to examine any officer, agent, or employee of such company, under oath, and require answers in writing, and if he shall find the books carelessly or improperly kept, or kept with intent to deceive, he shall have power to employ experts to thoroughly examine, rewrite, post, and balance the same at the expense of such company; and the Controller shall refuse or revoke his certificate of authority to any company refusing to permit such examination, or to pay the legitimate expenses thereof.

Showings Required of Companies Other Than State Corporations—Service of Notice.

910. SEC. 8. No insurance company organized outside the State of Nevada shall be permitted to do business in this state until it shows to the Controller, by the reports of the Insurance Commissioner or insurance officer of some other state having an insurance department, or by a certificate of such insurance officer, that

it is possessed of a paid up, unimpaired cash capital of at least two hundred thousand dollars, nor until such company shall have filed with the Controller a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and the principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice of this state, or any of the United States courts herein. If any attorney of any insurance company, appointed under the provisions of this Act, shall remove from the state or become disqualified in any manner from accepting service, and if any citizen or resident of this state shall have any claim by virtue of any insurance policy issued by any company not represented by attorney in this state, valid service may be made on such company by service upon the Controller; *provided*, that in such case the Controller shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service, by mail, postpaid; *and, provided further*, that in such case no proceedings shall be had within forty days after such service on the Controller.

Controller's Duties and Powers—Violations of Law and Penalties.

911. SEC. 9. Upon the written representation of three citizens, and the belief of the Controller, that any company organized outside of this state and doing an insurance business in this state has less than two hundred thousand dollars paid up, unimpaired cash capital, it shall be the duty of the Controller to make such investigation or require such proof as shall be satisfactory to him concerning the financial condition of such company; *provided, however*, the certificate of the insurance officer of any state having an insurance department, that such company has a paid up, unimpaired cash capital equal to two hundred thousand dollars in United States gold coin, shall be accepted by the Controller as satisfactory. If such company does not, within sixty days after demand of the Controller, produce such certificate, the Controller shall revoke his certificate of authority to such company to do business in this state, and in the meantime may withdraw or withhold his certificate of authority until such certificate is produced. If, after such withholding, refusal, withdrawal or revocation, such company, or any officer, agent or other person, shall write, deliver or agree to deliver any policy in such company, such person so violating the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to the penalties provided in section five of this Act.

Companies to Have Deposit.

912. SEC. 10. No company not incorporated in the United States shall be permitted to transact an insurance business in this state, unless the same shall have deposited or invested for the benefit of its policy-holders in the United States, in at least one state, a sum equal to two hundred thousand dollars, in gold coin, in excess of its liabilities in the United States.

Life Companies to Appoint Agents, etc. —Licenses.

913. SEC. 11. Nothing in this Act shall be construed to prevent any life insurance company having outstanding policies in this state from appointing agents to collect premiums thereon; *provided*, such company shall appoint an attorney, as provided in section eight of this Act, and pay five dollars for filing the power of attorney with the Controller, and the Controller shall issue his certificate authorizing the collection of premiums on outstanding policies only, and no requirement of capital herein shall apply to mutual life insurance companies possessing assets amounting to one million dollars or more.

Controller to Estimate in Determining Liabilities.

914. SEC. 12. The Controller shall, in determining the liabilities of any fire insurance company organized under the laws of this state, estimate and deter-

mine all debts and liabilities of such company, and shall calculate the reinsurance reserve for fire risks by taking fifty per centum of the premiums received on all unexpired risks having less than one year to run, and a pro rata premium on all risks having more than one year to run, and such estimates shall be charged as a liability against such company. The Controller shall accept the valuations made by the insurance officer of any state under whose authority any life insurance company is permitted to transact business in that state.

Regulation of Licenses.

915. SEC. 13. This Act shall take effect on the first day of June, one thousand eight hundred and eighty-one, and all licenses issued by the Controller shall expire on the thirty-first day of December of each year, and shall be issued pro rata for any period less than one year, and all companies having unexpired quarterly licenses shall have the full benefit thereof. Within thirty days after the first day of June, one thousand eight hundred and eighty-one, and within thirty days after the first day of January, one thousand eight hundred and eighty-two, and annually thereafter, each company doing or proposing to do an insurance business in this state shall apply to the Controller for a license, and if he shall be satisfied that such company is qualified to do business under the provisions of this Act, he shall issue the same, on the receipt in gold coin of the amount required herein, and the admission of any insurance company to do business in this state shall not be denied by the Controller when it makes and tenders a full compliance with the provisions of this Act.

Licenses to Fire, Life and Accident Companies, Amount Of.

916. SEC. 14. The Controller shall collect for filing each power of attorney and issuing his certificate, as required by this Act, five dollars; for an annual license to each fire insurance company to transact business throughout this state, one hundred dollars; for an annual license to each life insurance company, coöperative insurance association, or mutual benefit society, to transact business throughout this state, one hundred dollars; for an annual license to each life and accident insurance company, to transact business throughout this state, one hundred dollars; for an annual license to each casualty and surety company to transact business throughout this state, twenty dollars; *provided, however*, that nothing contained in this Act shall be construed to apply to any charitable secret society, organized in this state, or to prevent the same from issuing benefits to its members. For examining the financial condition of any company or association organized in this state, the just and legitimate expenses of such examination which shall be paid by the said company, and the Controller shall revoke or refuse his certificate of authority to any company neglecting or refusing to pay such expenses. All fines and penalties recovered under the provisions of this Act shall be paid into the state school fund, and all licenses, fees, and other collections by the Controller shall be paid into the general fund of the state; *provided*, the Controller shall be allowed the just and legitimate expenses of the examination before mentioned. *As amended, Stats. 1899, 107.*

Liability of Persons Acting for Companies in Any Capacity.

917. SEC. 15. Any person who solicits insurance, receives an application or order to write, renew or procure any policy, collects any premium, or who attempts as middleman to place any fire insurance in this state when such person holds no authority as agent from any insurance company or general agent of such company, shall be deemed an insurance broker, and shall pay to the county where such business is conducted or attempted, in advance, a quarterly license of fifteen dollars, and the License Collector of the county shall collect the same. If such broker shall neglect or refuse to procure such license he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than fifty dollars for each offense, and in

default of payment of the fine shall be imprisoned in the county jail not more than twenty-five days.

Controller Can Require Copies of Charters, Deeds, etc.

918. SEC. 16. The Controller may, at any time, require any insurance company doing business in this state to file in his office an authenticated copy of the certificate of incorporation, copy of the law, charter or deed of settlement under which its organization or formation was affected and its business is conducted; *provided, however*, that no company shall be required to file more than one such copy in this state.

Application of Term "Company," etc.

919. SEC. 17. The provisions of this Act under either term or designation of company, corporation, association, firm or individual in either case, or where either term or designation is used, shall apply to any insurer, company, corporation, association, firm or individual engaged as insurers, or who may hereafter engage as insurers in this state, or who may engage in offering or affording indemnity against the casualties of fire or life.

Fines and Penalties.

920. SEC. 18. Any officer, agent or employee of any insurance company or other person violating any of the provisions of this Act, shall, on conviction thereof, be fined not less than fifty dollars nor more than three hundred dollars, and in default of payment of such fine shall be imprisoned in the county jail not less than ten days nor more than three months, except as otherwise specially provided in this Act, and the Controller is authorized and directed to cause proceedings to be instituted in the name of the State of Nevada, in any court of competent jurisdiction, to enforce the provisions of this Act.

Unearned Premiums to Be Returned in Certain Cases.

921. SEC. 19. In the event of the total destruction of any insured property on which the amount of the appraised or agreed loss shall be less than the total amount insured thereon, the insuring company or companies, shall return to the insured the unearned premium for the excess of insurance over the appraised, or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid.

Repeal.

922. SEC. 20. "An Act to tax and regulate foreign insurance companies doing business in this state," approved January thirty-one, eighteen hundred and seventy-three [p. 46], is hereby repealed.

1. CONSTRUCTION OF INSURANCE POLICY—DOUBTS IN FAVOR OF ASSURED—MISSTATEMENT OF FACTS KNOWN TO ASSURED—DEPRECIATION OF PROPERTY—WHAT FALSE STATEMENT WORKS FORFEITURE OF POLICY. *Gerhauser v. North British Ins. Co.*, 7 Nev. 174.
2. VALID CONTRACT BEFORE DELIVERY OF POLICY. Part payment and risk accepted, binds company. *Cooper v. Pacific Mutual Co.*, 7 Nev. 116.

An Act to provide for the incorporation of mutual fire insurance companies and to define their powers and duties.

Approved March 6, 1897, 37.

Formation of Mutual Fire Insurance Companies.

923. SECTION 1. Any number of persons not less than ten, who shall be residents and householders in the county in which such company is formed, may associate themselves together and form an incorporated company for the purpose of mutual insurance of the property of its members against loss by fire; which property to be insured shall belong to members of the company and embrace dwelling-houses, barns accompanying out-buildings and their contents, creameries,

farm implements, hay, grain, wool and other products, live stock, wagons, buggies, carriages, harness, household goods, wearing apparel, provisions, musical instruments, furniture, and libraries being upon farms as farm property, or in dwellings, or in accompanying out-buildings.

Certificate to Be Filed.

924. SEC. 2. Such corporation shall be formed under the laws of Nevada, governing the formation of corporations and the certificate of incorporation together with its by-laws shall be filed with the State Controller.

When to Commence Business.

925. SEC. 3. The persons so associating, after having perfected such incorporation and filed their certificate of incorporation and by-laws with the State Controller as aforesaid, may open books to receive applications for membership and enter into agreements in manner hereinafter specified; but no company organized by this Act shall do any business or take any risks or make any insurance in any county other than the one in which the company is organized; which county shall be named and set forth in the incorporation papers filed with the Secretary of State and State Controller; *provided*, that no insurance company organized as aforesaid shall commence business until *bona fide* agreements shall have been entered into for insurance with at least twenty-five individuals covering property to be insured to the amount of not less than fifty thousand dollars.

To Hold Real Estate in Certain Cases.

926. SEC. 4. No company formed under this Act shall purchase or hold real estate except—

First—Such as shall be necessary for its immediate accommodation in transacting business; or

Second—Such as shall have been conveyed or mortgaged to the company in good faith by way of security for debts; or

Third—Such as shall have been conveyed to the company in satisfaction of debts; or

Fourth—Such as shall have been purchased at sale upon judgments, decrees or mortgages in favor of such company or held or owned by it; and all real estate obtained by virtue of any provision of this section, except that mentioned in the first subdivision, shall be sold or disposed of within five years after the title has been perfected in such company unless the company shall procure a certificate from the State Controller that the interest of said company will materially suffer by forced sale, in which event the sale may be postponed for such period as the said Controller shall direct in said certificate—not to exceed ten years in all.

Articles of Incorporation and By-Laws.

927. SEC. 5. In addition to the foregoing provisions it shall be the duty of the corporators or any company organized under the provisions of this Act to declare in its articles of incorporation and by-laws, the mode and manner in which the incorporate power given under and by virtue of this Act are to be exercised; the qualification of membership; the mode and manner of electing Trustees or Directors, who shall be residents of the county in which the company is doing business, the filling of vacancies, and may prescribe therein the liabilities of the members to be assessed toward defraying the losses and expenses of the company and the mode and manner of collecting such assessments.

Investigation and Certification.

928. SEC. 6. The articles of incorporation and by-laws required to be filed by the corporation shall be examined by the Attorney-General, and if found to be in accordance with the requirements of this Act, he shall certify the same to the State Controller, and the State Controller may appoint three disinterested persons, residents of the county wherein such corporation is formed, who shall certify under oath that it has received and is in actual possession of the premiums

or engagements of insurance (as the case may be), to the full extent required in this Act; *provided, however*, the State Controller may make such examination personally or by his deputy. When satisfied that all the provisions of this Act have been fully complied with, it shall be the duty of the State Controller to certify such facts to the officers of the corporation, which certificate, upon being filed by them in the County Clerk's office, in the county in which such company is located, shall be its authority to receive additional members, issue policies and transact any and all business provided for in its articles of incorporation and by-laws.

May Make By-Laws.

929. SEC. 7. The Directors of any company organized under this Act shall have power to make such by-laws, not inconsistent with the constitution and laws of this state, as may be deemed necessary for the government of its officers and members and the conduct of its affairs.

To Make a Statement Annually to Controller—What to Show.

930. SEC. 8. It shall be the duty of the President and Secretary of each company organized under this Act, annually on the first day of January, or within one month thereafter, to prepare under oath and deposit with the State Controller a statement of the condition of such company on the 31st day of December then next preceding, exhibiting the following facts, to wit:

First—The number of members on the last day of December of the previous year, the number of members added during the year, the number of members who have withdrawn or whose policies have been canceled during the year, and the number of members belonging to the company.

Second—The amount of property at risk December 31st of previous year, the amounts of risks added during the year, the number of risks canceled, withdrawn or terminated during the year, and the net amount at risk by the company.

Third—The amount of premium or deposit notes in force, the amount of cash premiums (or assessments) actually on hand, the amount of outstanding assessments not canceled, the nature and amount of all other resources, and the total amount of resources.

Fourth—The claims for losses due and payable, the claims for losses not matured, the claims for losses resisted, the nature and amount of all other claims due or accrued, and the total amount of liabilities.

Fifth—The amount of premiums or deposit notes taken during the year, the amount of cash premiums received during the year, the amount collected on assessments which were levied during the year, the amount collected during the year on assessments which were levied in previous years, the amount received from membership or policy fees or from other sources constituting an expense to the insured, the amount received from percentage on increased or decreased insurance, the income from all other sources and the total income.

Sixth—The amount paid for losses during the year, stating the amount of same which was for losses for previous years, the amount of salary and fees paid the officers and directors, the amount of all other expenditures during the year and the total expenditures during the year.

Controller to Investigate—May Require Company to Close Up Business.

931. SEC. 9. A copy of every sworn statement and report shall in said month of January be filed in the office of the County Clerk of the county where the principal office of the company is located, and another copy thereof shall be published at least twice during said month in a newspaper printed in such county. The officers making such sworn statement or report shall also file with the report herein required to be filed with the State Controller, an additional affidavit showing that such report and statement has been published and a copy thereof filed in the office of the County Clerk as herein provided; and if upon examination of the affairs of the company as hereinafter provided for, it shall

appear to the Controller that the losses and expenses of any company incorporated under this Act have, during the year, exceeded the cash premiums and assets collected to such an extent as to imply a doubt in his mind as to the solvency of such company and its ability to pay all its losses and other debts, it shall be his duty to serve a notice upon the officers of such company, requiring them, at the expiration of sixty days from the date of such notice, to discontinue issuing policies and proceed to close up its business; unless, within that time, the directors of such company shall collect assessments and pay such losses and debts.

Responsible for Failure to Comply With Requirements.

932. SEC. 10. If any company shall fail to comply with the requirements of the Controller in said notice or if it shall fail to make its annual report to the Controller at the time and in the manner herein prescribed therefor, or shall issue any policy or make any insurance, or if such report to the Controller shall be imperfect or contain false statements or shall be made as fraudulently to conceal the actual condition or responsibility of the company after the expiration of sixty days or in any manner fail or refuse to comply with the requirements of the Controller in said notice, the Directors and officers of such company shall be jointly and severally personally responsible for any losses that may thereafter occur in said company or to any person insured therein or thereby; and the person sustaining such losses may sue for and recover the amount of such losses from such Directors and officers, or from any one or more of them.

Controller to Furnish Blanks—Failure to Perform Duties, Guilty of Felony.

933. SEC. 11. It shall be the duty of the Controller on or before the first day of December in each year to furnish all companies organized under this Act with blanks for the purpose of making thereon the statement herein required to be filed, which blanks shall be issued by the proper officers in making said statements, which statements shall be full and in accordance with the requirements heretofore set forth, and he may from time to time make such change in the form of such statement as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated. In case the officers or Directors of any company shall fail, neglect or refuse to perform the duties required of them by law within the time and in the manner prescribed for the performance of such duty, or shall knowingly make or permit any false or imperfect statement to be made in any annual or other report or statement required to be made by them, or by any of them, or by the company to the Controller, or shall do or aid, or assist in doing, anything which any such company is hereby prohibited from doing or shall in any manner violate any of the provisions of this Act, or shall aid in or consent to any violation of the provisions of this Act, then, and in every such case, every Director or person so offending shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars nor less than five hundred dollars or by imprisonment in the state prison not more than one year, or by such fine and imprisonment, in the discretion of the court; and when such failure, neglect or refusal on the part of the officers of any company is known to the Controller it shall be his duty to notify the District Attorney of the county where such company is located whose duty it shall be to commence legal proceedings against such persons or officers to enforce the penalty hereby imposed.

Suits Maintained—Assessments, etc.

934. SEC. 12. Suits at law may be maintained by any corporation formed under this Act against any of its members for any cause relating to the business of such corporation or by any member against such corporation for claims which may have accrued, if payments are withheld more than sixty days after such claims shall have become due. It shall be lawful for any mutual insurance company, organized under this Act, to make assessments upon premium notes,

agreements, or the policies issued thereon pro rata according to the amount of such agreements of policies for the payment of the losses and expenses incurred by such company and all such premium notes or assessments shall be a lien upon the property insured to the amount of such notes or assessments, costs, and interest due thereon.

Bodies Corporate.

935. SEC. 13. All companies formed under this Act shall be deemed bodies corporate and politic in fact and in name and shall be subject to all the provisions of the statute in relation to corporations as far as they are applicable.

May Amend Articles of Incorporation—Attorney-General to Certify.

936. SEC. 14. Any company formed under this Act shall have power to amend the articles of incorporation at any regular annual meeting held in accordance with the provisions of their articles of incorporation, upon giving notice of their intention to do so and of the time and meeting for that purpose; such notice shall be published three successive times in some newspaper published in the county where such company is organized. Said amendments shall be submitted to the Attorney-General and his certificate of compliance with the law obtained and shall be filed in the office of the Controller and also with the County Clerk of the county in which the office of the company is located, before they shall take effect.

Controller to File Statement, When.

937. SEC. 15. If any insurance company, organized under this Act shall not, within sixty days after the Controller shall have given the notice required by section nine, pay up and discharge all outstanding claims against said company, it shall be the duty of the Controller to file a statement with the Clerk of the district court of the county where such company has transacted business, reciting the fact that the sixty days within which such company was required to proceed to close up its business have expired and that there are outstanding claims against such company. A copy of said statement shall be published for three successive weeks in a newspaper in such county.

State Controller to Examine Into Affairs.

938. SEC. 16. The State Controller, at any time when he deems it advisable, may in person or by deputy visit and examine into the affairs of any mutual insurance company organized under the provisions of this Act; and it shall be the duty of the officers or agents of any such company to cause their books to be opened for inspection and otherwise to facilitate such examination so far as it may be in their power to do so, and for that purpose the Controller shall have power to examine under oath the officers and agents of any company relative to the standing and condition of said company. All necessary expenses of such examination shall be paid by the company so examined.

Appointment of Receiver—Duties of Receiver.

939. SEC. 17. At any time after the publication required by section fifteen of this Act, the Controller may appear in court in person or by council and move for the appointment of a receiver for said company; and the said company may also be heard, and upon such hearing the report of such company filed in the office of the Controller shall be conclusive evidence of the facts therein stated and of the liability of such company, unless such company shall show that they have since paid and discharged the liabilities; and if upon the hearing thereof it shall appear to such court that the statements of the Controller are materially true, the said court shall appoint a receiver for said company who is hereby empowered to take possession of all books and papers and personal property of said company, and shall ascertain the amount due from said company or property insured, and shall at once proceed to assess upon all the members and persons insured in said company such sums of money as will in the aggregate be sufficient to pay all the

losses and liabilities of said company, together with the services and expenses of such receiver according to and in proportion to the amount of their insurance or interest in such company; and upon payment of such assessment the said members shall be discharged of and from all former assessments made by such company. It shall be the duty of such receiver to give notice of such assessment by publishing in some newspaper published in the county where the company is located, once a week for three successive weeks a general notice stating therein the aggregate amount assessed in said company; and upon application he shall furnish to any person assessed a statement showing the amount of his assessments. In case any member or person so assessed shall neglect for thirty days after such publication to pay the amount of such assessment to said receiver, the receiver may sue for the same in any court of competent jurisdiction for the amount so assessed with costs. If the amount realized by such receiver be insufficient to pay the losses and liabilities therein and for the services and expenses aforesaid he shall proceed to make a second assessment and such further or other assessments as may be necessary to realize a sum sufficient to pay all the losses and liabilities of such company in the same manner and with like effect as herein provided for making the first assessment and shall sue for and collect the same in the same manner. If after paying the losses and liabilities of such company and the services and expenses aforesaid, there shall remain any funds in the hands of the receiver the same shall be paid to the persons assessed in just and equal proportions to the sums contributed and paid by them.

Receiver to Keep Account—Bond of Receiver.

940. SEC. 18. Such receiver shall keep an accurate account of all moneys or other property received by him and shall pay over all money by him collected and the proceeds of all personal property pro rata upon said liabilities, after deducting therefrom for his services and expenses (if the court after making such appointment shall deem the amount reasonable). The court making such appointment may also require such receiver to give a bond with sufficient sureties in such penal sum as the court shall determine, which said bond shall run to the State of Nevada and be conditioned for the faithful discharge of his duties as such receiver, and be approved by the Judge of such court, and said court may from time to time require such receiver to make a report and upon the acceptance of a final report showing a full and faithful performance of such trust may discharge such receiver and his bondsmen from further liability. If any receiver shall be in charge of the business of any company on the last day of December of any year, it shall be his duty, during the month of January following to make a full report to the Controller, showing the condition of affairs of such receivership on the thirty-first day of December preceding.

Purpose of Formation—Exempt from Other Insurance Laws.

941. SEC. 19. Every mutual fire insurance company organized under the provisions of this Act, shall be for the sole purpose of mutually insuring the property of the members thereof and for the purpose of paying any loss incurred by any members thereof by assessment as provided by the constitution and by-laws of such company; and all such companies are hereby exempt from the provisions of the insurance laws of this state, governing foreign corporations and corporations not organized on the mutual plan, and nothing herein shall be so construed as to impair or in any manner interfere with any of the rights and privileges of such companies doing insurance business in this state or to relieve them of any duties and responsibilities now imposed on such companies by law.

An Act relating to life, health, accident and annuity or endowment insurance on the assessment plan, and the conduct of the business of such insurance.

Approved March 23, 1891, 130.

Definition of "Mutual Insurance."

942. SECTION 1. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent, in any degree, upon the collection of assessments or dues from persons holding similar contracts, shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

Corporations May Be Formed on Conditions.

943. SEC. 2. Corporations may be formed under the general laws of this state to carry on the business of mutual insurance upon the assessment plan, and shall be subject only to the provisions of this Act. No such corporation shall issue contracts of insurance until at least two hundred (200) persons have applied, in writing, for membership or insurance therein, and have paid to the Treasurer of such corporation the sum of five thousand (\$5,000) dollars. This sum shall be invested in bonds or securities, approved by the Controller of this state. Said bonds or securities shall be placed, through the State Controller, with the State Treasurer, and the principal sum shall be held in trust for the contract holders of such corporation, with the right in the corporation to exchange said bonds or securities, for others of like value. Such corporation shall also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the Controller that it has complied with the requirements of this Act, and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor shall the Controller approve any name or title so closely resembling another as to mislead the public.

Must Begin Business in One Year.

944. SEC. 3. No corporation formed hereunder shall have legal existence after one year from the date of its articles unless its organization has been completed and business commenced, nor shall any corporation or individual solicit or cause to be solicited, any business until such corporation shall have complied with the provisions of section seven and paid the fees required in section twelve of this Act.

May Reincorporate, but Not Obligatory.

945. SEC. 4. Any existing corporation, engaged in transacting the business of life, health, accident or endowment insurance, on the assessment plan, may reincorporate under the provisions of the laws of this state and under the provisions of this Act; *provided*, that it shall not be obligatory upon such corporation to reincorporate, and any such existing corporation may continue to exercise all rights, powers and privileges conferred by this Act the same as if incorporated hereunder.

Payments, How Made and Secured.

946. SEC. 5. The contracts of insurance issued by such corporations shall specify the sum or sums to be paid upon the happening of the contingency insured against and when such payments will be made. Unless the contract shall have been invalidated by fraud or by breach of its conditions, the corporations shall be obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness shall be a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of such insolvency. Failure to make such payment within thirty days after (notice at the

home office by mail, as provided by law, of) final judgment, unless waiver is made by the beneficiary, shall constitute a forfeiture of the right to do business.

Reserve, or Emergency Fund—Disposition of Reserve Fund.

947. SEC. 6. Every domestic corporation organized or doing business under this Act shall accumulate a reserve or emergency fund, which shall at all times be not less than the largest benefit contracted to be paid by it to any one person. Every existing domestic corporation must accumulate such fund within one year from the date when this Act takes effect, and any corporation organized hereunder within one year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, shall be so invested and deposited, as provided in section two hereof, with the right in the corporation to exchange any such sureties for others of equal value. The deposit required by section two of this Act shall constitute a part of the reserve required by this section, at the option of such corporation. When any corporation doing business hereunder shall discontinue business, this fund shall be returned to such corporation, after expiration of sixty days from the publication of a notice in a newspaper published in such county in which such corporation did business in this state, and on satisfactory proof to the State Treasurer that said notice was published as aforesaid, for a period of two weeks, unless said fund has been otherwise disposed of by a district court of this state.

Conditions Precedent to Foreign Corporations—License Issued, When May Be Revoked.

948. SEC. 7. Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance, shall, as a condition precedent to transacting business in this state, deposit with the State Controller a certified copy of its charter, or other instrument required by its home authorities, a statement under oath of its President or Secretary of its business for the preceding year, in such form as may be required by the State Controller; a power of attorney which shall authorize a citizen and resident of this state to make and accept service in any proceeding in any of the courts of justice in this state, or of any of the United States courts herein, as provided in section eight of "An Act to license and regulate insurance business in this state," approved February 23, 1881; a certificate that for the next preceding twelve months it has paid, in full, the maximum amount named in its contracts of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums, and evidence satisfactory to the Controller that the corporation has accumulated a fund equal to that required of like corporation[s] of this state, constituting a reserve or surplus fund held in trust for the benefit of its contract holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The Controller shall, thereupon, issue a license to such corporation to do business in this state, on payment of the license tax as provided in section thirteen of this Act. This license shall be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not true. Upon such revocation, notice thereof shall be given by the Controller by publication in some newspaper of general circulation published in the state, for two weeks, and no new contracts shall be made by such company in this state. When any other state or country imposes any additional license, fees, taxes or penalties upon any corporation organized or doing business under this Act, like license, fees, taxes or penalties shall be imposed upon corporations of the same kind, and their agents, of such state or country doing business in this state.

Insurable Age—Penalty for Fraud—False Swearing, Perjury.

949. SEC. 8. No corporation doing business under this Act (except accidental

[accident] or casualty corporations) shall issue a contract of insurance upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for one hundred dollars life insurance or less) such application shall be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, and showing the applicant to be in good health, and recommending the issuance of a contract of insurance; *provided*, that no medical examination shall be required on any application for accident or casualty insurance only. Any solicitor, agent, employee, examining physician or other person, making a false or fraudulent statement to any corporation doing business under this Act, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment in the discretion of the court. And any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract holder in procuring the payment of a benefit [named] in the contract, shall be guilty of perjury, and may be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Exempt from Attachment.

950. SEC. 9. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the contracts, issued by any corporation doing business under this Act, shall not be liable to attachment or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process nor by operation of law, to pay any debts or liabilities of the contract holder or any beneficiary named thereunder.

Report to Controller.

951. SEC. 10. Every domestic and foreign corporation doing business under this Act shall, annually, on or before the first day of March, file with the State Controller, in such form as he shall prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The Controller in person, or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business, or claiming to do business under this Act, at any time in his discretion, and shall make such examination at least once a year.

Controller May Call Officers to Account.

952. SEC. 11. If the Controller, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this Act, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of (notice of) default, pay its obligations, he shall cite the President, Secretary, manager or general agent of said corporation, or all of them, to appear before him (stating the time and place) to show cause why the authority of such corporation to do business shall not be revoked; and if they cannot show cause, then he shall report the facts to the Attorney-General of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

Policy Not to Lapse Without Notice.

953. SEC. 12. No policy or certificate issued by any corporation or association, doing business under the provisions of this Act, shall lapse or be lapsed for the

non-payment of any assessment, dues or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid and the time the same is due and payable (and such notice shall be mailed at least fifteen days before the assessment is due); *provided*, that such corporations doing business under this Act as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices; and an affidavit made by the officer, bookkeeper or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records of the office of the said corporation, showing that such notice was mailed and the date of mailing, shall constitute conclusive evidence of the mailing of such notice.

Fee for License.

954. SEC. 13. The State Controller shall collect five dollars for filing each power of attorney and issuing his certificate of authority for doing business, and one hundred (\$100) dollars per annum in advance for a license to do business, which shall be in full for all fees for the purposes of this Act.

Penalties—Expenses, How Paid.

955. SEC. 14. The penalties for any violation of this Act shall, except as otherwise provided herein, be the same as provided in "An Act to license and regulate insurance business in this state," approved February 23, 1881. [*Sec. 903, et seq.*] For all lawful expenses under this Act, or by reason of any of its provisions, in the prosecution of any suit or proceedings, or otherwise, for the enforcement of its provisions, the Controller shall present bills, duly certified by him, and accompanied with vouchers, to the State Board of Examiners, who shall allow the same, and the Controller shall draw warrants therefor on the State Treasurer for payment to the Controller of said bills, which warrants shall be payable out of the general fund.

Not to Apply to Fraternal Societies.

956. SEC. 15. The provisions of this Act shall not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils; nor to any mutual or benefit association organized or formed and composed only of members of any such society, lodge, or council exclusively.

Repeal.

957. SEC. 16. "An Act to regulate and license mutual life associations in this state," approved February 26, 1887 [p. 85], and an Act amendatory thereof, approved March 9, 1889 [p. 98], are hereby repealed.

An Act requiring insurance companies to make annual statements to the State Controller.

Approved February 23, 1889, 40.

When Made—What to Show.

958. SECTION 1. Every insurance company of whatever kind or character, and every mutual life or assessment association, except charitable secret societies issuing benefits to its own members only, shall annually, on or before the first day of March, file in the office of the State Controller a statement, signed and sworn to by its President and Secretary, which shall exhibit its financial condition on the thirty-first day of December of the previous year, and shall include a detailed statement of its assets and liabilities, the amount and character of its business transacted and moneys received and expended during that year, specifying particularly its business transacted in Nevada, and such other information

as the State Controller may deem necessary to elicit a complete and accurate exhibit of its condition and transactions, and in such form as he may prescribe. The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business. The transaction of any new business by any company, or its agents, after neglect to file a statement in the manner herein provided, shall be unlawful. *As amended, Stats. 1891, 32.*

Failure to File Statement—False Statement.

959. SEC. 2. Any company that neglects to make and file its annual statement in the form and within the time provided by section one, shall forfeit one hundred dollars for each day's neglect, and upon notice by the State Controller to that effect, its authority to do new business shall cease while such default continues. For willfully making a false annual or other statement it is required by law to make, an insurance company and the persons making oath to or subscribing the same, shall severally be punished by fine of not less than five hundred nor more than five thousand dollars. Any person making oath to such false statement shall be deemed guilty of the crime of perjury.

Controller to Report to Governor.

960. SEC. 3. The State Controller shall annually report to the Governor abstracts of all statements received, together with such suggestions as may be pertinent.

An Act to authorize the formation of corporations for the purpose of transacting business as sureties on all bonds and undertakings required by law, and to prescribe the powers and duties of such incorporations.

Approved March 8, 1897, 61.

Power to Incorporate.

961. SECTION 1. Any ten or more persons who are residents and householders in the State of Nevada may, by complying with the provisions of this Act, form a company under the general incorporation laws of this state for the purpose of acting as and becoming surety on any bond or undertaking required by the laws of this state.

Approval and Filing of Certificate.

962. SEC. 2. All certificates of incorporation prepared under the provisions of this Act shall be submitted to the Attorney-General, and if found to be in accordance with law in all respects, that officer shall certify that fact, which certificate shall be authority for the Secretary of State to receive and file such articles of incorporation in accordance with the statutes governing the formation of corporations.

Who to Be Stockholders—Affidavits—Examination of Stockholder, etc.

963. SEC. 3. Each and every person before becoming an officer or stockholder in any company organized under this Act shall justify before an officer authorized to administer oaths that he is a resident and freeholder or householder within this state and that he is worth double the par value of stock subscribed by him in said company, over and above all his debts and liabilities, in property situated within this state and which is not exempt from sale on execution. If at any time thereafter the assets of any such stockholder shall from any cause be reduced to such an extent as to render him unable to justify as above, it shall be his duty to surrender stock in said company in proportion to such reduction in his assets. If at any time any taxpayer in the state shall make complaint under oath to the District Attorney of the county wherein such stockholder resides, that the provisions of this section are being neglected, not complied with, or violated, by any such stockholder, it shall be the duty of such District Attorney to cause such

stockholder to be examined under oath before some Justice of the Peace in his county, as to the financial condition of such stockholder, and if it shall appear that such stockholder has violated the provisions of this section he shall forfeit his stock in such corporation and in addition thereto shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment.

Stockholder Responsible.

964. SEC. 4. Every stockholder shall be personally responsible to the full amount of the par value of the stock held in the company.

Liabilities Limited.

965. SEC. 5. In no case shall the total amount of liabilities incurred by any company exceed the total amount of stock actually held by the members of any incorporation organized under this Act.

To File Articles With County Recorder.

966. SEC. 6. Each company organized under this Act shall file a properly certified copy of its articles of incorporation in the office of the Recorder of each county in this state in which any bond is furnished by such company, and no bond shall be accepted or approved in any county until such articles of incorporation are so filed.

Duty of District Attorney.

967. SEC. 7. It shall be the duty of any District Attorney in any county in this state, whenever he may become personally aware that any of the provisions of section three of this Act are being neglected, avoided or not complied with by any officer or stockholder of any surety company formed under the provisions of this Act, to personally cause any such stockholder to be examined under oath concerning the same, before some Justice of the Peace as in said section three provided, and upon the failure of any District Attorney so to do, he shall be deemed guilty of a misdemeanor in office and may be proceeded against accordingly.

An Act to facilitate the giving of bonds and undertakings required by law.

Approved February 26, 1887, 86.

Surety Company May Go on Bond, Conditions—Duties of Controller—Fees of Secretary of State.

968. SECTION 1. Any company incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons, or corporations, or state, county or township officers, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may, upon production of evidence of solvency and credit satisfactory to the Judge, head of department or other officer or officers authorized to approve such bond, be accepted as surety upon the bond of any person, or corporation, state, county or township officer required by the laws of this state to execute a bond, and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional security may be exacted, but other surety may, in the discretion of the official or officials authorized to approve such bond, be required, and such surety company may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of this Act to enable corporations created for that purpose, to become surety on bonds required, subject to all the rights and liabilities of private parties. No surety company not incorporated under authority of this state shall, directly or indirectly, take risks or transact busi-

ness in this state until it shall have first appointed the State Controller of this state to be the true and lawful attorney of such company, in and for this state, upon whom all lawful process may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company, which is served on said attorney, shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding in this state. A certificate of such appointment shall be filed in the office of the Secretary of State, and copies certified by him shall be received in evidence in all the courts of this state. Service of process in actions and proceedings upon such attorney shall be deemed service upon the principal, but such principal shall be allowed thirty days thereafter within which to appear and plead in all such actions and proceedings. Whenever any lawful process against a surety company shall be served upon the State Controller he shall forthwith forward a copy of the process served upon him, by mail, postpaid, and directed to the Secretary of the company. For each copy of the process the Secretary of State shall collect the sum of five dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as a part of the taxable costs if he prevail in the suit. *As amended, Stats. 1899, 101.*

Sum for Expenses.

969. SEC. 2. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond or undertaking may, whenever such person or corporation has given any such surety company as security upon said bond or undertaking, allow in the settlement of such account a reasonable sum for the expense of procuring such surety; *provided*, the provisions of this section shall not apply to any state or county officer required by law to give a bond.

Shall Be Estopped.

970. SEC. 3. Any company which shall execute any bonds as surety, under the provisions of this Act, shall be estopped in proceedings to enforce the liability which it shall have assumed to incur to deny its corporate power to execute such instrument or assume such liability.

RAILROAD, TELEGRAPH AND TELEPHONE.

An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto.

Approved March 22, 1885, 427.

Formation of Corporations—Conditions.

971. SECTION 1. Any number of persons, not less than ten, either in this state or the United States, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, and maintaining such railroad, by complying with the following requirements: Whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been so subscribed, and ten per cent in cash of the amount so required to be subscribed, shall be actually, and in good faith, paid to a Treasurer, to be named and appointed by said subscribers from among their number, then the said subscribers, either in person or by written proxy, after having received at least five days notice from said Treasurer of a meeting of said subscribers for that purpose, may adopt articles of associ-

ation, and may elect from among the subscribers to said articles, not less than five nor more than thirteen Directors.

What Articles Shall Set Forth—What Articles May Be Signed by Proxy—Affidavit of Amount of Stock.

972. SEC. 2. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of the capital stock of the company, which shall be divided into shares of not exceeding one hundred dollars each, and not less than ten dollars each, as may be fixed in the articles of association, and which shall be the actual contemplated cost of constructing the road, together with the cost of the right of way, motive power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the Directors to manage the affairs of the company, who shall hold their offices until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length, as near as may be; each subscriber to such articles of association shall personally subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company; *provided*, that in case a person desirous of becoming a subscriber, but compelled to be absent from the state at the time of subscribing to such articles of association, he having duly paid the ten per cent required by law upon his subscription, may sign the same by written proxy, or power of attorney, to that effect; and there shall be endorsed or attached to said articles so subscribed, an affidavit made by three Directors therein named, setting forth in substance, that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are all known by one or the other of the said three Directors to be subscribers thereto, and to be the persons so represented. Any corporation heretofore formed under the Act of which this is amendatory, desiring to divide the capital stock of the company into shares of a less denomination than one hundred dollars, according to the provisions of this section, may do so by a majority vote of the Directors of the company, at any regular or called meeting of the board, and may issue the stock of such company in accordance therewith, after having filed in the office of the Secretary of State a certificate setting forth the amount or denomination in which they propose to divide such shares, verified by the affidavit of three of such Directors. In case the shares of stock of such corporation shall have already been issued, or any portion thereof, of the denomination of one hundred dollars, the holders of the same may at their option surrender their certificates of stock, and receive in lieu thereof the equivalent of the same in certificates of shares of the smaller denominations, so fixed and established by the Board of Directors. *As amended, Stats. 1871, 52.*

To File Articles in Office of Secretary of State—Powers and Rights of Corporations—Certified Copies to Be Evidence.

973. SEC. 3. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the Secretary of State, and thereupon the persons who have, or may, subscribe the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey, any and all real and personal property whatever, necessary for the construction, completion, and maintenance of such railroad, and for the erection of all necessary buildings and yards, or places and appurtenances, for the use of the same, and be capable of suing and being sued, and have a common or corporate seal and make and alter the same at pleasure, and generally to possess all the powers and privileges, for the purpose of carrying

[accident] or casualty corporations) shall issue a contract of insurance upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for one hundred dollars life insurance or less) such application shall be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, and showing the applicant to be in good health, and recommending the issuance of a contract of insurance; *provided*, that no medical examination shall be required on any application for accident or casualty insurance only. Any solicitor, agent, employee, examining physician or other person, making a false or fraudulent statement to any corporation doing business under this Act, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment in the discretion of the court. And any person who shall make a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract holder in any such corporation, for the purpose of procuring or aiding the beneficiary or beneficiaries or contract holder in procuring the payment of a benefit [named] in the contract, shall be guilty of perjury, and may be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Exempt from Attachment.

950. SEC. 9. The money, benefit, annuities, endowment, charity, relief, or aid to be paid as provided by the contracts, issued by any corporation doing business under this Act, shall not be liable to attachment or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process nor by operation of law, to pay any debts or liabilities of the contract holder or any beneficiary named thereunder.

Report to Controller.

951. SEC. 10. Every domestic and foreign corporation doing business under this Act shall, annually, on or before the first day of March, file with the State Controller, in such form as he shall prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The Controller in person, or by duly authorized deputy, shall have the power of examination into the affairs of any domestic corporation doing business, or claiming to do business under this Act, at any time in his discretion, and shall make such examination at least once a year.

Controller May Call Officers to Account.

952. SEC. 11. If the Controller, after examination of the affairs of a corporation, shall find that such corporation is not doing its business in conformity to this Act, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of (notice of) default, pay its obligations, he shall cite the President, Secretary, manager or general agent of said corporation, or all of them, to appear before him (stating the time and place) to show cause why the authority of such corporation to do business shall not be revoked; and if they cannot show cause, then he shall report the facts to the Attorney-General of this state, who shall commence proceedings in the proper court to restrain said corporation from doing any further business.

Policy Not to Lapse Without Notice.

953. SEC. 12. No policy or certificate issued by any corporation or association, doing business under the provisions of this Act, shall lapse or be lapsed for the

non-payment of any assessment, dues or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given postoffice address, a notice setting forth the amount to be paid and the time the same is due and payable (and such notice shall be mailed at least fifteen days before the assessment is due); *provided*, that such corporations doing business under this Act as collect specific amounts at specific dates, as contained in the contract, shall not be compelled to send such notices; and an affidavit made by the officer, bookkeeper or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records of the office of the said corporation, showing that such notice was mailed and the date of mailing, shall constitute conclusive evidence of the mailing of such notice.

Fee for License.

954. SEC. 13. The State Controller shall collect five dollars for filing each power of attorney and issuing his certificate of authority for doing business, and one hundred (\$100) dollars per annum in advance for a license to do business, which shall be in full for all fees for the purposes of this Act.

Penalties—Expenses, How Paid.

955. SEC. 14. The penalties for any violation of this Act shall, except as otherwise provided herein, be the same as provided in "An Act to license and regulate insurance business in this state," approved February 23, 1881. [*Sec. 903, et seq.*] For all lawful expenses under this Act, or by reason of any of its provisions, in the prosecution of any suit or proceedings, or otherwise, for the enforcement of its provisions, the Controller shall present bills, duly certified by him, and accompanied with vouchers, to the State Board of Examiners, who shall allow the same, and the Controller shall draw warrants therefor on the State Treasurer for payment to the Controller of said bills, which warrants shall be payable out of the general fund.

Not to Apply to Fraternal Societies.

956. SEC. 15. The provisions of this Act shall not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils; nor to any mutual or benefit association organized or formed and composed only of members of any such society, lodge, or council exclusively.

Repeal.

957. SEC. 16. "An Act to regulate and license mutual life associations in this state," approved February 26, 1887 [p. 85], and an Act amendatory thereof, approved March 9, 1889 [p. 98], are hereby repealed.

An Act requiring insurance companies to make annual statements to the State Controller.

Approved February 23, 1889, 40.

When Made—What to Show.

958. SECTION 1. Every insurance company of whatever kind or character, and every mutual life or assessment association, except charitable secret societies issuing benefits to its own members only, shall annually, on or before the first day of March, file in the office of the State Controller a statement, signed and sworn to by its President and Secretary, which shall exhibit its financial condition on the thirty-first day of December of the previous year, and shall include a detailed statement of its assets and liabilities, the amount and character of its business transacted and moneys received and expended during that year, specifying particularly its business transacted in Nevada, and such other information

as the State Controller may deem necessary to elicit a complete and accurate exhibit of its condition and transactions, and in such form as he may prescribe. The annual statement of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business. The transaction of any new business by any company, or its agents, after neglect to file a statement in the manner herein provided, shall be unlawful. *As amended, Stats. 1891, 32.*

Failure to File Statement—False Statement.

959. SEC. 2. Any company that neglects to make and file its annual statement in the form and within the time provided by section one, shall forfeit one hundred dollars for each day's neglect, and upon notice by the State Controller to that effect, its authority to do new business shall cease while such default continues. For willfully making a false annual or other statement it is required by law to make, an insurance company and the persons making oath to or subscribing the same, shall severally be punished by fine of not less than five hundred nor more than five thousand dollars. Any person making oath to such false statement shall be deemed guilty of the crime of perjury.

Controller to Report to Governor.

960. SEC. 3. The State Controller shall annually report to the Governor abstracts of all statements received, together with such suggestions as may be pertinent.

An Act to authorize the formation of corporations for the purpose of transacting business as sureties on all bonds and undertakings required by law, and to prescribe the powers and duties of such incorporations.

Approved March 8, 1897, 61.

Power to Incorporate.

961. SECTION 1. Any ten or more persons who are residents and householders in the State of Nevada may, by complying with the provisions of this Act, form a company under the general incorporation laws of this state for the purpose of acting as and becoming surety on any bond or undertaking required by the laws of this state.

Approval and Filing of Certificate.

962. SEC. 2. All certificates of incorporation prepared under the provisions of this Act shall be submitted to the Attorney-General, and if found to be in accordance with law in all respects, that officer shall certify that fact, which certificate shall be authority for the Secretary of State to receive and file such articles of incorporation in accordance with the statutes governing the formation of corporations.

Who to Be Stockholders—Affidavits—Examination of Stockholder, etc.

963. SEC. 3. Each and every person before becoming an officer or stockholder in any company organized under this Act shall justify before an officer authorized to administer oaths that he is a resident and freeholder or householder within this state and that he is worth double the par value of stock subscribed by him in said company, over and above all his debts and liabilities, in property situated within this state and which is not exempt from sale on execution. If at any time thereafter the assets of any such stockholder shall from any cause be reduced to such an extent as to render him unable to justify as above, it shall be his duty to surrender stock in said company in proportion to such reduction in his assets. If at any time any taxpayer in the state shall make complaint under oath to the District Attorney of the county wherein such stockholder resides, that the provisions of this section are being neglected, not complied with, or violated, by any such stockholder, it shall be the duty of such District Attorney to cause such

stockholder to be examined under oath before some Justice of the Peace in his county, as to the financial condition of such stockholder, and if it shall appear that such stockholder has violated the provisions of this section he shall forfeit his stock in such corporation and in addition thereto shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment.

Stockholder Responsible.

964. SEC. 4. Every stockholder shall be personally responsible to the full amount of the par value of the stock held in the company.

Liabilities Limited.

965. SEC. 5. In no case shall the total amount of liabilities incurred by any company exceed the total amount of stock actually held by the members of any incorporation organized under this Act.

To File Articles With County Recorder.

966. SEC. 6. Each company organized under this Act shall file a properly certified copy of its articles of incorporation in the office of the Recorder of each county in this state in which any bond is furnished by such company, and no bond shall be accepted or approved in any county until such articles of incorporation are so filed.

Duty of District Attorney.

967. SEC. 7. It shall be the duty of any District Attorney in any county in this state, whenever he may become personally aware that any of the provisions of section three of this Act are being neglected, avoided or not complied with by any officer or stockholder of any surety company formed under the provisions of this Act, to personally cause any such stockholder to be examined under oath concerning the same, before some Justice of the Peace as in said section three provided, and upon the failure of any District Attorney so to do, he shall be deemed guilty of a misdemeanor in office and may be proceeded against accordingly.

An Act to facilitate the giving of bonds and undertakings required by law.

Approved February 26, 1887, 86.

Surety Company May Go on Bond, Conditions—Duties of Controller—Fees of Secretary of State.

968. SECTION 1. Any company incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons, or corporations, or state, county or township officers, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may, upon production of evidence of solvency and credit satisfactory to the Judge, head of department or other officer or officers authorized to approve such bond, be accepted as surety upon the bond of any person, or corporation, state, county or township officer required by the laws of this state to execute a bond, and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional security may be exacted, but other surety may, in the discretion of the official or officials authorized to approve such bond, be required, and such surety company may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of this Act to enable corporations created for that purpose, to become surety on bonds required, subject to all the rights and liabilities of private parties. No surety company not incorporated under authority of this state shall, directly or indirectly, take risks or transact busi-

ness in this state until it shall have first appointed the State Controller of this state to be the true and lawful attorney of such company, in and for this state, upon whom all lawful process may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful process against the company, which is served on said attorney, shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding in this state. A certificate of such appointment shall be filed in the office of the Secretary of State, and copies certified by him shall be received in evidence in all the courts of this state. Service of process in actions and proceedings upon such attorney shall be deemed service upon the principal, but such principal shall be allowed thirty days thereafter within which to appear and plead in all such actions and proceedings. Whenever any lawful process against a surety company shall be served upon the State Controller he shall forthwith forward a copy of the process served upon him, by mail, postpaid, and directed to the Secretary of the company. For each copy of the process the Secretary of State shall collect the sum of five dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as a part of the taxable costs if he prevail in the suit. *As amended, Stats. 1899, 101.*

Sum for Expenses.

969. SEC. 2. Any court or officer whose duty it is to pass upon the account of any person or corporation required by law to give a bond or undertaking may, whenever such person or corporation has given any such surety company as security upon said bond or undertaking, allow in the settlement of such account a reasonable sum for the expense of procuring such surety; *provided*, the provisions of this section shall not apply to any state or county officer required by law to give a bond.

Shall Be Estopped.

970. SEC. 3. Any company which shall execute any bonds as surety, under the provisions of this Act, shall be estopped in proceedings to enforce the liability which it shall have assumed to incur to deny its corporate power to execute such instrument or assume such liability.

RAILROAD, TELEGRAPH AND TELEPHONE.

An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto.

Approved March 22, 1865, 427.

Formation of Corporations—Conditions.

971. SECTION 1. Any number of persons, not less than ten, either in this state or the United States, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, and maintaining such railroad, by complying with the following requirements: Whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been so subscribed, and ten per cent in cash of the amount so required to be subscribed, shall be actually, and in good faith, paid to a Treasurer, to be named and appointed by said subscribers from among their number, then the said subscribers, either in person or by written proxy, after having received at least five days notice from said Treasurer of a meeting of said subscribers for that purpose, may adopt articles of associ-

ation, and may elect from among the subscribers to said articles, not less than five nor more than thirteen Directors.

What Articles Shall Set Forth—What Articles May Be Signed by Proxy—Affidavit of Amount of Stock.

972. SEC. 2. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of the capital stock of the company, which shall be divided into shares of not exceeding one hundred dollars each, and not less than ten dollars each, as may be fixed in the articles of association, and which shall be the actual contemplated cost of constructing the road, together with the cost of the right of way, motive power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the Directors to manage the affairs of the company, who shall hold their offices until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length, as near as may be; each subscriber to such articles of association shall personally subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company; *provided*, that in case a person desirous of becoming a subscriber, but compelled to be absent from the state at the time of subscribing to such articles of association, he having duly paid the ten per cent required by law upon his subscription, may sign the same by written proxy, or power of attorney, to that effect; and there shall be endorsed or attached to said articles so subscribed, an affidavit made by three Directors therein named, setting forth in substance, that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are all known by one or the other of the said three Directors to be subscribers thereto, and to be the persons so represented. Any corporation heretofore formed under the Act of which this is amendatory, desiring to divide the capital stock of the company into shares of a less denomination than one hundred dollars, according to the provisions of this section, may do so by a majority vote of the Directors of the company, at any regular or called meeting of the board, and may issue the stock of such company in accordance therewith, after having filed in the office of the Secretary of State a certificate setting forth the amount or denomination in which they propose to divide such shares, verified by the affidavit of three of such Directors. In case the shares of stock of such corporation shall have already been issued, or any portion thereof, of the denomination of one hundred dollars, the holders of the same may at their option surrender their certificates of stock, and receive in lieu thereof the equivalent of the same in certificates of shares of the smaller denominations, so fixed and established by the Board of Directors. *As amended, Stats. 1871, 52.*

To File Articles in Office of Secretary of State—Powers and Rights of Corporations—Certified Copies to Be Evidence.

973. SEC. 3. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the Secretary of State, and thereupon the persons who have, or may, subscribe the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey, any and all real and personal property whatever, necessary for the construction, completion, and maintenance of such railroad, and for the erection of all necessary buildings and yards, or places and appurtenances, for the use of the same, and be capable of suing and being sued, and have a common or corporate seal and make and alter the same at pleasure, and generally to possess all the powers and privileges, for the purpose of carrying

on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association, filed in pursuance of this Act, and certified to be a copy by the Secretary of State, or his deputy, shall in all courts and places be presumptive evidence of the incorporation of such company, and of the facts stated therein; and such a copy, so certified, shall be kept in the office of the Secretary of the corporation, subject to examination during office hours by any person.

Duty of Directors—Election of Officers—Books of Subscription.

974. SEC. 4. The Directors named in the articles of association shall meet and organize as a board immediately after their election, or within five days after having received notice of such election given by the Treasurer, named and designated in the first section of this Act; and at the first meeting of the board, after each annual election of Directors, they shall elect from among their number a President and a Treasurer; they shall also elect a Secretary; who, and their successors in office, shall be officers of the company, and shall hold their respective offices until their successors have been duly elected and qualified. The Secretary and Treasurer, before they enter upon the discharge of their duties, shall each give a bond, with sufficient surety, for the faithful performance of their respective duties to be approved by the Board of Directors. The temporary Treasurer, required by the first section of this Act, shall pay over all moneys received by him as such Treasurer to the Treasurer elected by the Board of Directors, and every succeeding board, when deemed necessary, shall open books of subscription to the capital stock of the company, at such times, and in such places, upon such terms, and authorize such persons to receive and superintend the taking of such subscriptions, as they may direct, due notice of which shall be given; but no subscription of stock, except the original subscription, shall be binding on the company, or parties so subscribing, until the same shall have been accepted and approved by a resolution of the board. In case a greater amount of acceptable stock shall be subscribed than the whole capital required by such company, the Board of Directors shall distribute such capital stock so subscribed as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any one subscriber than by him subscribed for.

Meeting of Stockholders—Election of Directors—Qualifications of—Term of Office.

975. SEC. 5. There shall be, after the first election of Directors, as prescribed by the first section of this Act, annual meetings of the stockholders held in one of the counties in which or through which such road is proposed to be or may be constructed, for the election of Directors, to serve for the ensuing year, notice of which, appointing a time and place, shall be given for the first annual election and every subsequent election thereafter, as prescribed by the by-laws of the company, or by a resolution of the Board of Directors, which notice shall be published not less than twenty days previous thereto in a newspaper published in each county through or into which such road shall pass or be intended to run (if there be stockholders residing therein), in which a newspaper shall be published; and if no newspaper is published therein, then by six written or printed notices put up in the most public places in said county. Directors shall be elected from time to time, as a majority of the whole stock shall determine, or as the by-laws shall designate, as may be determined in the formation of articles of association, in pursuance of the provisions of the first and second sections of this Act; shall be chosen at such meetings of stockholders by ballot and by a majority of the votes of the stockholders being present in person or by written proxy; and every such stockholder being so present, either in person or by proxy, at any election for Directors, shall be entitled to give one vote for every share of stock which he may have owned for ten days next preceding such election; but no stockholder shall vote at any such election upon any stock, except such as he shall have owned for ten days. No person shall be a Director unless he shall be a stockholder, own-

ing stock absolutely in his own right, and qualified to vote for Directors at the election at which he may be chosen. The Directors shall hold their office for one year, and until others are elected in their places. At least a majority of the Directors shall, at the time of their election, be residents of this state.

Called Meetings of Stockholders—When and How Stock May Be Reduced—Proviso.

976. SEC. 6. Meetings of the stockholders may be called at any time during the interval between the annual meetings by the Directors, or by any number of stockholders owning not less than one-fourth of the stock, by giving fifteen days' public notice of the time and place of the meetings, in the manner provided in the next preceding section, for the annual meetings; and when any such meeting is called by the stockholders, the particular object of such meeting shall be stated in such notice, and no other business shall be transacted at such meeting when so called by the stockholders as aforesaid, except such as shall be so stated in such notice; and if, at any such meeting thus called, a majority in value of the stockholders are not represented in person or by written proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if, within said three days, stockholders having at least a majority in interest of the stock do not attend and participate in such meeting, then the meeting shall be dissolved. In case the capital stock shall be ascertained to be greater or less than is necessary for completing, operating and maintaining the road, then the capital stock may be reduced or increased by a vote of the holders of a majority of the capital stock to the amount thus required; or the holders of a majority of the capital stock may, by a vote at any annual or called meeting of the stockholders, provide[d] for the return to or distribution among the stockholders, in such manner and according to such plan as they may direct, of any surplus capital or funds that may accrue to the corporation by payments on subscriptions to the capital stock, grants, donations or otherwise, over and above the amount necessary to construct, complete, maintain, and equip the road; *provided*, that no such division or distribution shall be made until the road shall be built and equipped between the extreme points named in the articles of association.

Legislature May Change Fare and Freight.

977. (SEC. 3.) The legislature shall from time to time, when it may deem proper, change the rates of fare and freight of all narrow-gauge railroads constructed under the provisions of this Act. *Amendment, Stats. 1871, 52.*

Removal of Officers.

978. SEC. 7. At all general meetings of the stockholders, two-thirds in value of the stockholders of the company, being present in person or by proxy, may remove any President or any Director of such company, and elect others in their stead; *provided*, notice of such intended removal shall have been given as required in the last two preceding sections.

Delay of Election of Directors—Vice-President—Compensation—Vacancies.

979. SEC. 8. In case it shall happen at any time that any election of Directors shall not be made on the day designated by the by-laws of the company when it ought to have been made, the company, for that reason, shall not be dissolved, if within ninety days thereafter they shall hold an election for Directors in such manner as shall be provided by the by-laws of the company. There shall also be a Vice-President of the company, should the Directors deem it necessary, to be chosen from the board, and, also, such subordinate officers as the company, by its by-laws, may designate, who need not, necessarily, be stockholders. The said officers shall be chosen at such times and for such terms, and the Directors may fix the compensation of each, and they shall give such security for the faithful performance of the duties of their respective offices as the Directors shall require, or as may be established by the by-laws of the company; and any such officer may be removed from office by the Board of Directors, and the

vacancy filled by said board for the remainder of the term of office; and the Directors of such company shall also have power to fill all vacancies in their own body, and of all officers of the company, occasioned by death, resignation, or any other cause whatever.

Powers of Directors—Proviso.

980. SEC. 9. The Directors of any railroad company heretofore incorporated or which may be incorporated hereafter, from and after its incorporation or organization, in pursuance of the provisions of this Act, or of any law now in force in this state, shall, for and on behalf of such company, manage the affairs thereof, make and execute contracts, of whatever nature or kind, fully and completely to carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such Directors shall also have full power to make such by-laws as they may think proper, and alter the same from time to time, for the transfer of the stock, and the management of the property and business of the company, of every description whatsoever, within the objects and purposes of such company, and for prescribing the duties of officers, artificers, and employees of said company, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company; *provided*, that such by-laws shall not be inconsistent or in conflict with the laws of this state, or with the articles of association; *provided*, that such by-laws shall be approved by a majority of the stockholders, and shall not be inconsistent or in conflict with the laws of this state, or with the articles of association.

1. RAILROAD CORPORATION—POWERS OF—MANAGEMENT OF—BOARD OF DIRECTORS—CHARTER. A corporation can exercise no power not granted to it by the legislature. The powers of management granted in this state are delegated to the Board of Directors and are embraced in above section. That power, which is fairly implied, is as much granted as those which are expressed. The charter of a corporation is the measure of its powers, and the enumeration of powers in the charter is an exclusion of all other powers. *George v. N. C. R. Co.*, 22 Nev. 228.

RAILROAD CORPORATION HAS NO AUTHORITY TO EMPLOY A PERSON TO REPORT ON MINES. *Id.*

RAILROAD CORPORATIONS—WHEN MAY BE HELD LIABLE. A corporation cannot be bound even by the act of its Board of Directors, unless done in the pursuance of some object embraced by its charter, or of some power conferred upon it by law. *Ricord v. C. P. R. Co.*, 15 Nev. 168.

Record of Corporation Debts—Duties of Secretary.

981. SEC. 10. The Directors shall also cause to be kept a book, to be called "Record of Corporation Debts," in which the Secretary shall record all written contracts of the Directors, and a succinct statement of the debts of the company, the amount thereof, and with whom made, which book shall at all times be open to the inspection of any stockholder or party in interest. When any contract or debt shall be paid or discharged, the Secretary shall make a memorandum thereof in the margin, or in some convenient place in the record, where the same is recorded. No contract shall be binding upon the company unless made in writing.

Record of Proceedings—Further Duties of Secretary.

982. SEC. 11. The Secretary of the corporation, who may be elected by the Directors named in the articles of association, and every succeeding Secretary elected during the continuance of said corporation, shall keep, in a book provided for that purpose, a correct record of the proceedings at each meeting of the company, as well as the Board of Directors; such record showing the name of each Director present at the opening of each meeting of the Board, and at what stage of the proceedings any Director, previously absent, may appear, and also at what stage of the proceedings any Director may obtain leave of absence. The records shall also show the name of each Director voting against any proposition, when-

ever any Director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the company, or of the Board of Directors, the record of the proceedings of such meeting shall be read and approved; and he shall also keep such other books as may be deemed necessary, or prescribed by the Directors, in which all the business transactions of the company shall be plainly and accurately kept; he shall keep a book to be labeled "Book of Stockholders," which shall contain the names of all persons, alphabetically arranged, who are, or shall have been, stockholders of said company, and showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they respectively became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock, as also the time when they may have ceased to be stockholders; which book during the office hours of said Secretary shall be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office of said Secretary. There shall also be kept by the Secretary a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid for any purpose whatever, except as between the parties thereto, until it shall have been entered therein by an entry showing to and by whom transferred, the numbers and designation of the shares, and the date of, and duly attested by said Secretary, and said book shall be presumptive evidence of the facts therein stated.

Stock—Personal Estate of Stockholders.

983. SEC. 12. The stock of such company shall be deemed personal estate, and shall be transferable in the manner provided by the preceding section, and upon the book of the company, upon proper assignment and delivery to the assignee of the certificate of stock; but no share shall be transferable until all previous calls or installments thereon shall have been fully paid in. *As amended, Stats. 1869, 89.*

Payment of Subscription—Notice, Form of—Sale of Shares.

984. SEC. 13. It shall be lawful for the Directors of such company to call in and demand from the stockholders the sums by them subscribed, in equal installments of not more than ten per cent per month, unless otherwise stipulated in the articles of subscription, at such times as they deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks, in a newspaper published at the place designated as the principal place of business of the corporation, or, if none is published there, in some newspaper nearest such place, which notice shall be substantially in the following form: "Notice is hereby given, that an assessment of -----dollars per share on the stock of-----company, is due and payable at the office of the company in----- (and at such other places as the Directors may designate, naming them), within thirty days from date. All shareholders are requested to make payment on or before that time, or such assessment will be promptly collected by law. -----, Secretary." If after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, the same or so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction, to the highest bidder; and at such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and the other expenses of sale, for the smallest number of shares or parts of shares, shall be deemed to be the highest bidder. All stockholders shall be liable to such sale for installments due or required to be paid by such Directors as prescribed by this Act.

Certificates of Stock.

985. SEC. 14. Certificates of stock shall be issued, signed by the President

vacancy filled by said board for the remainder of the term of office; and the Directors of such company shall also have power to fill all vacancies in their own body, and of all officers of the company, occasioned by death, resignation, or any other cause whatever.

Powers of Directors—Proviso.

980. SEC. 9. The Directors of any railroad company heretofore incorporated or which may be incorporated hereafter, from and after its incorporation or organization, in pursuance of the provisions of this Act, or of any law now in force in this state, shall, for and on behalf of such company, manage the affairs thereof, make and execute contracts, of whatever nature or kind, fully and completely to carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such Directors shall also have full power to make such by-laws as they may think proper, and alter the same from time to time, for the transfer of the stock, and the management of the property and business of the company, of every description whatsoever, within the objects and purposes of such company, and for prescribing the duties of officers, artificers, and employees of said company, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company; *provided*, that such by-laws shall not be inconsistent or in conflict with the laws of this state, or with the articles of association; *provided*, that such by-laws shall be approved by a majority of the stockholders, and shall not be inconsistent or in conflict with the laws of this state, or with the articles of association.

- 1. RAILROAD CORPORATION—POWERS OF—MANAGEMENT OF—BOARD OF DIRECTORS—CHARTER.** A corporation can exercise no power not granted to it by the legislature. The powers of management granted in this state are delegated to the Board of Directors and are embraced in above section. That power, which is fairly implied, is as much granted as those which are expressed. The charter of a corporation is the measure of its powers, and the enumeration of powers in the charter is an exclusion of all other powers. *George v. N. C. R. Co.*, 22 Nev. 228.

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Record of Proceedings—Further Duties of Secretary.

982. SEC. 11. The Secretary of the corporation, who may be elected by the Directors named in the articles of association, and every succeeding Secretary elected during the continuance of said corporation, shall keep, in a book provided for that purpose, a correct record of the proceedings at each meeting of the company, as well as the Board of Directors; such record showing the name of each Director present at the opening of each meeting of the Board, and at what stage of the proceedings any Director, previously absent, may appear, and also at what stage of the proceedings any Director may obtain leave of absence. The records shall also show the name of each Director voting against any proposition, when-

ever any Director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the company, or of the Board of Directors, the record of the proceedings of such meeting shall be read and approved; and he shall also keep such other books as may be deemed necessary, or prescribed by the Directors, in which all the business transactions of the company shall be plainly and accurately kept; he shall keep a book to be labeled "Book of Stockholders," which shall contain the names of all persons, alphabetically arranged, who are, or shall have been, stockholders of said company, and showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they respectively became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock, as also the time when they may have ceased to be stockholders; which book during the office hours of said Secretary shall be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office of said Secretary. There shall also be kept by the Secretary a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid for any purpose whatever, except as between the parties thereto, until it shall have been entered therein by an entry showing to and by whom transferred, the numbers and designation of the shares, and the date of, and duly attested by said Secretary, and said book shall be presumptive evidence of the facts therein stated.

Stock—Personal Estate of Stockholders.

983. SEC. 12. The stock of such company shall be deemed personal estate, and shall be transferable in the manner provided by the preceding section, and upon the book of the company, upon proper assignment and delivery to the assignee of the certificate of stock; but no share shall be transferable until all previous calls or installments thereon shall have been fully paid in. *As amended, Stats. 1869, 89.*

Payment of Subscription—Notice, Form of—Sale of Shares.

984. SEC. 13. It shall be lawful for the Directors of such company to call in and demand from the stockholders the sums by them subscribed, in equal installments of not more than ten per cent per month, unless otherwise stipulated in the articles of subscription, at such times as they deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks, in a newspaper published at the place designated as the principal place of business of the corporation, or, if none is published there, in some newspaper nearest such place, which notice shall be substantially in the following form: "Notice is hereby given, that an assessment of -----dollars per share on the stock of-----company, is due and payable at the office of the company in----- (and at such other places as the Directors may designate, naming them), within thirty days from date. All shareholders are requested to make payment on or before that time, or such assessment will be promptly collected by law. -----, Secretary." If after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, the same or so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction, to the highest bidder; and at such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and the other expenses of sale, for the smallest number of shares or parts of shares, shall be deemed to be the highest bidder. All stockholders shall be liable to such sale for installments due or required to be paid by such Directors as prescribed by this Act.

Certificates of Stock.

985. SEC. 14. Certificates of stock shall be issued, signed by the President

and Secretary, in such manner as may be prescribed by the by-laws of the company. *As amended, Stats. 1869, 89.*

May Borrow Money—Sinking Fund.

986. SEC. 15. Such companies shall have power to borrow from time to time on the credit of the corporation, and under such restrictions as two-thirds in interest of the stockholders may impose, such sum or sums of money not exceeding in all the amount of its capital stock, as may be necessary for the construction and equipment of their road, at a rate of interest not to exceed fifteen per centum per annum, and to execute bonds or promissory notes therefor, in sums not less than one thousand dollars in any one note or bond, and to secure said notes or bonds, may mortgage their corporated property and franchise, and pledge the income of the company; and the Directors of such company shall also provide, in such manner as to them may seem best, a sinking fund, to be especially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond so issued for money borrowed, or in payment of any debt, or contract, for the construction or equipment of such road as aforesaid, the right to convert the principal due or owing thereon into stock of such company, at any time within six years from the date of such bond, under such regulations as the company may adopt. *As amended, Stats. 1866, 250; 1869, 89.*

Capital Stock Paid in—Certificates Of.

987. SEC. 16. The President and Secretary and a majority of the Directors, within thirty days after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate, stating the amount of capital so fixed and paid in, which certificate shall be signed by the President and Secretary and a majority of the Directors, and they shall, within the said thirty days, file the same in the office of the Secretary of State.

Powers and Rights of Company.

988. SEC. 17. Every railroad corporation shall have power:

First—To cause such examination and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purposes, by their officers, agents, and employees, to enter upon the lands or waters of any persons, but subject to responsibility for all damages which they shall do thereto.

Second—To receive, hold, take, and convey, by deed or otherwise, the same as a natural person might or could do, such voluntary grants and donations of real estate, and other property of every description, as shall be made to it to aid and encourage the construction, maintenance and accommodation of such railroad.

Third—To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers, surveyors and agents, enter upon and take possession of, and hold and use, in any manner they may deem proper, all such lands and real estate, and other property, as the Directors may deem necessary and proper for the construction and maintenance of such railroad, and for the stations, depots, and other accommodations and purposes, deemed necessary to accomplish the object for which the corporation is created.

Fourth—To lay out its road or roads, not exceeding ten rods wide, and to construct and maintain the same, with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same, and for the purposes of making embankments, excavations, ditches, drains, culverts, or otherwise, and procuring timber, stone, and gravel, or other materials, may take as much more land, whenever they may think proper, as may be necessary for the purposes aforesaid, in the manner hereinafter provided, for the proper construction and security of the road.

Fifth—To construct their road across, along, or upon any stream of water, water course, roadstead, bay, navigable stream, street, avenue, or highway, or

across any railway, canal, ditch, or flume, which the route of its road shall intersect, cross, or run along, in such manner as to afford security for life and property; but the corporation shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected, to its former state, as near as may be, or in a sufficient manner not to have unnecessarily impaired its usefulness or injured its franchises.

Sixth—To cross, intersect, join, and unite its railroad with any other railroad, either before or after constructed, at any point upon its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every company whose railroad is, or shall be hereafter, intersected by any new railroad in forming such intersections and connection, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same shall be ascertained and determined by commissioners, to be appointed as is provided hereinafter in respect to the taking of lands, but this section is not to affect the rights and franchises heretofore granted.

Seventh—To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, or take them in the manner provided by this Act; may change the line of its road, in whole or in part, whenever a majority of the Directors shall determine, as is provided hereinafter; but no such change shall vary the general route of such road, as contemplated in the articles of association of such company.

Eighth—To receive by purchase, donation, or otherwise, any lands, or other property, of any description, and to hold and convey the same in any manner the Directors may think proper, the same as natural persons might or could do, that may be necessary for the construction and maintenance of its road, or for the erection of depots, turnouts, workshops, warehouses, or for any other purposes necessary for the conveniences of such companies, in order to transact the business usual for such railroad companies.

Ninth—To take, transport, carry, and convey persons and property on their railroad, by the force and power of steam, of animals, or any mechanical power, or by any combinations of them, and receive tolls or compensation therefor.

Tenth—To erect and maintain all necessary and convenient buildings, stations, depots, and fixtures, and machinery for the accommodation and use of their passengers, freight, and business, and to obtain and hold the lands and other property necessary therefor.

Eleventh—To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits prescribed by law.

Twelfth—To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations, fully and completely for the management of its business transactions usual and proper for railroad companies.

May Change Line of Road.

989. SEC. 18. If at any time after the location of the line of such railroad, in whole or in part, and the filing of the map thereof, as provided by this Act, it shall appear to the Directors of such company that the same may be improved, such Directors may, from time to time, alter or change the line in any manner they may think proper, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the land embraced in such new location, that may be required for the construction and maintenance of such road on such new line, either by agreement with the owner or owners of such lands, or by such proceedings as are authorized under the provisions of this Act, and use and enjoy the same in place of the line for which the

new is substituted; but nothing in this Act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section seventeen, subdivision seven, of this Act.

Crossing Railroads or Highways—May Take and Use Lands, etc.

990. SEC. 19. Whenever the track of such railroad shall cross a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient, and in cases where an embankment or cutting shall make a change in the line of such railroad or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands and materials, if needed for the construction of such road or highway, on such new line, as may be deemed requisite by said Directors; unless the lands and materials so taken shall be purchased, or voluntarily given for the purpose aforesaid, compensation therefor shall be ascertained in the manner in this Act provided, as nearly as may be, and duly made by such corporation to the owners and persons interested in such lands; and the same, when so taken and compensation made, to become part of such intersecting road or highway, in such manner and by such terms as the adjacent parts of such highways may be held for highway purposes.

Right of Way Granted—Width of Right of Way—Depots, etc.—Conveyance of Lands, etc., by Cities.

991. SEC. 20. The right of way is hereby given and granted to all railroad companies that are now organized, or may be organized under the provisions of this Act, to locate, construct, and maintain their roads, or any part or parcel thereof, over and through any of the swamp or overflowed lands belonging to this state, or any other public lands which are now or may be the property of this state, at the time of constructing said railroad; and the said railroad companies are hereby authorized to survey and mark through the said lands of the state, to be held by them for the track of their respective railroads, one hundred feet in width, for the whole length the said roads may be located over the lands of the state; and in cases where deep excavations, or heavy embankments, or other cuttings or structures whatever, or ditches, drains, canals, culverts, or other structures to protect the road bed, and to facilitate the use and enjoyment of the same, is or may be required for the grade or other uses of said roads, then at such places a greater width may be taken by such company, and which is hereby given, not exceeding two hundred feet wide; and the right is hereby further given and granted to said companies, to locate, occupy, and hold all necessary sites and grounds for watering places, depots, or other buildings, for the convenient use of the same, along the line of said road or roads, so far as the places convenient for the same may fall upon the lands belonging to the state, except within the limits of any incorporated city or town, or within three miles where the same shall be taken, on paying to the state the value of the same; and, *provided*, that no one depot, watering place, machine or workshop, or other buildings for the convenient use of such roads, shall cover over two square acres each, and that said sites or places on the lands of this state shall not be nearer to each other than five miles along the lines of said roads. The right is hereby further given and granted to said companies, to take from any of the lands belonging to this state all such materials of earth, wood, stone, or other materials whatever, as may be necessary or convenient, from time to time, for the first construction or equipment of said road or roads, or any part thereof; *provided*, that the grants herein made, as well of the use of the land of this state as for the materials for the construction and equipment of said road or roads, shall cease and determine as respects such particular road, which shall not have been begun and completed within the times limited in section thirty-nine of this Act; and, *provided further*, that if any road, at any time after its location, shall be discontinued or abandoned by said company or companies, or the location of any part thereof be so changed as not to

cover the lands of the state thus previously occupied, then the lands so abandoned or left shall revert to this state; *and, provided further*, that when the location of the route of either of said railroads, or sites or places for depots, watering places, machine or workshops, or other buildings for the convenient use of the same, shall be selected, the Secretary of said company shall transmit to the Surveyor-General, and to the Controller of the state, and to the Recorder of the county in which the lands so selected are situated, to each of said officers, a correct plot of the location of said railroad, or sites or places, before such selection shall become operative.* And when any such company shall, for its purposes aforesaid, require any of the lands belonging to any of the counties, cities, or towns in this state, the county, city, and town officers respectively, having charge of such lands, may grant and convey such land to such company, for a compensation which shall be agreed upon between them, or may donate and convey the same without any compensation; and if they shall not agree upon the sale and price, the same may be taken by the company as is provided in other cases of taking lands by the provisions of this Act.

Cities May Make Grants—Proviso.

992. SEC. 21. Any county, city, or town in this state, shall have, and are hereby fully empowered, by and through a two-thirds vote of the Board of Commissioners, the Common Council, or any other officers having a supervisory or other control of such county, city, or town, respectively, to give, grant, or donate, to any railroad company now organized, or that may be hereafter organized under the laws of this state, the use of any of the streets or highways which may be absolutely necessary in order to enable any such company to reach an accessible point for a depot in any such county, city and county, city or town, or to pass through the same on as direct a route as possible, and accommodate the traveling and commercial interests thereof; *provided, however*, the provisions of this section shall not apply to any street railroad now constructed, or hereafter to be constructed, in any of the incorporated cities of this state; nor shall any railroad company, who may avail themselves of the provisions of this section, ever use their road for street railroad purposes, or for the purpose of carrying passengers for a consideration from one point to another in the same city; nor shall any city or town donate any public square, or any land set apart, to the use of any one company.

Surveys—General Rights and Powers.

993. SEC. 22. Any railroad company, organized under the provisions of this Act, or any railroad company organized under any law of this state, which shall accept the provisions of this Act, as herein provided, is authorized to enter upon any land for the purpose of surveying the line of its proposed railroad, the company being responsible for any damage occasioned by such; and such company is also authorized to acquire, purchase, and hold any real estate, or any right, title, or interest therein, which may be necessary or proper for the purpose of the construction or maintenance of the track or tracks, water stations, depots, machine or workshops, turntables, or any other building or structure necessary for such railroad; but such company shall not hold such real estate, or any right, title, or interest therein, required or used solely or mainly for the construction or maintenance of the track or tracks of said railroad, beyond the time of the legal existence of said company, nor after the location of said track or tracks has been changed therefrom, nor after said company shall have failed, or ceased, to the use of the same for the maintenance of such track for the space of five years continuously; but in each of such cases, the said real estate, and all the right, title, and interest therein, shall revert to the person or persons, and his or their assigns, from whom the same was acquired by said company.

Guardians, etc., May Convey Real Estate to Company.

994. SEC. 23. If it shall become necessary, for any of the purposes afore-

new is substituted; but nothing in this Act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section seventeen, subdivision seven, of this Act.

Crossing Railroads or Highways—May Take and Use Lands, etc.

990. SEC. 19. Whenever the track of such railroad shall cross a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track, as may be most expedient, and in cases where an embankment or cutting shall make a change in the line of such railroad or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands and materials, if needed for the construction of such road or highway, on such new line, as may be deemed requisite by said Directors; unless the lands and materials so taken shall be purchased, or voluntarily given for the purpose aforesaid, compensation therefor shall be ascertained in the manner in this Act provided, as nearly as may be, and duly made by such corporation to the owners and persons interested in such lands; and the same, when so taken and compensation made, to become part of such intersecting road or highway, in such manner and by such terms as the adjacent parts of such highways may be held for highway purposes.

Right of Way Granted—Width of Right of Way—Depots, etc.—Conveyance of Lands, etc., by Cities.

991. SEC. 20. The right of way is hereby given and granted to all railroad companies that are now organized, or may be organized under the provisions of this Act, to locate, construct, and maintain their roads, or any part or parcel thereof, over and through any of the swamp or overflowed lands belonging to this state, or any other public lands which are now or may be the property of this state, at the time of constructing said railroad; and the said railroad companies are hereby authorized to survey and mark through the said lands of the state, to be held by them for the track of their respective railroads, one hundred feet in width, for the whole length the said roads may be located over the lands of the state; and in cases where deep excavations, or heavy embankments, or other cuttings or structures whatever, or ditches, drains, canals, culverts, or other structures to protect the road bed, and to facilitate the use and enjoyment of the same, is or may be required for the grade or other uses of said roads, then at such places a greater width may be taken by such company, and which is hereby given, not exceeding two hundred feet wide; and the right is hereby further given and granted to said companies, to locate, occupy, and hold all necessary sites and grounds for watering places, depots, or other buildings, for the convenient use of the same, along the line of said road or roads, so far as the places convenient for the same may fall upon the lands belonging to the state, except within the limits of any incorporated city or town, or within three miles where the same shall be taken, on paying to the state the value of the same; and, *provided*, that no one depot, watering place, machine or workshop, or other buildings for the convenient use of such roads, shall cover over two square acres each, and that said sites or places on the lands of this state shall not be nearer to each other than five miles along the lines of said roads. The right is hereby further given and granted to said companies, to take from any of the lands belonging to this state all such materials of earth, wood, stone, or other materials whatever, as may be necessary or convenient, from time to time, for the first construction or equipment of said road or roads, or any part thereof; *provided*, that the grants herein made, as well of the use of the land of this state as for the materials for the construction and equipment of said road or roads, shall cease and determine as respects such particular road, which shall not have been begun and completed within the times limited in section thirty-nine of this Act; and, *provided further*, that if any road, at any time after its location, shall be discontinued or abandoned by said company or companies, or the location of any part thereof be so changed as not to

cover the lands of the state thus previously occupied, then the lands so abandoned or left shall revert to this state; *and, provided further*, that when the location of the route of either of said railroads, or sites or places for depots, watering places, machine or workshops, or other buildings for the convenient use of the same, shall be selected, the Secretary of said company shall transmit to the Surveyor-General, and to the Controller of the state, and to the Recorder of the county in which the lands so selected are situated, to each of said officers, a correct plot of the location of said railroad, or sites or places, before such selection shall become operative. And when any such company shall, for its purposes aforesaid, require any of the lands belonging to any of the counties, cities, or towns in this state, the county, city, and town officers respectively, having charge of such lands, may grant and convey such land to such company, for a compensation which shall be agreed upon between them, or may donate and convey the same without any compensation; and if they shall not agree upon the sale and price, the same may be taken by the company as is provided in other cases of taking lands by the provisions of this Act.

Cities May Make Grants—Proviso.

992. SEC. 21. Any county, city, or town in this state, shall have, and are hereby fully empowered, by and through a two-thirds vote of the Board of Commissioners, the Common Council, or any other officers having a supervisory or other control of such county, city, or town, respectively, to give, grant, or donate, to any railroad company now organized, or that may be hereafter organized under the laws of this state, the use of any of the streets or highways which may be absolutely necessary in order to enable any such company to reach an accessible point for a depot in any such county, city and county, city or town, or to pass through the same on as direct a route as possible, and accommodate the traveling and commercial interests thereof; *provided, however*, the provisions of this section shall not apply to any street railroad now constructed, or hereafter to be constructed, in any of the incorporated cities of this state; nor shall any railroad company, who may avail themselves of the provisions of this section, ever use their road for street railroad purposes, or for the purpose of carrying passengers for a consideration from one point to another in the same city; nor shall any city or town donate any public square, or any land set apart, to the use of any one company.

Surveys—General Rights and Powers.

993. SEC. 22. Any railroad company, organized under the provisions of this Act, or any railroad company organized under any law of this state, which shall accept the provisions of this Act, as herein provided, is authorized to enter upon any land for the purpose of surveying the line of its proposed railroad, the company being responsible for any damage occasioned by such; and such company is also authorized to acquire, purchase, and hold any real estate, or any right, title, or interest therein, which may be necessary or proper for the purpose of the construction or maintenance of the track or tracks, water stations, depots, machine or workshops, turntables, or any other building or structure necessary for such railroad; but such company shall not hold such real estate, or any right, title, or interest therein, required or used solely or mainly for the construction or maintenance of the track or tracks of said railroad, beyond the time of the legal existence of said company, nor after the location of said track or tracks has been changed therefrom, nor after said company shall have failed, or ceased, to the use of the same for the maintenance of such track for the space of five years continuously; but in each of such cases, the said real estate, and all the right, title, and interest therein, shall revert to the person or persons, and his or their assigns, from whom the same was acquired by said company.

Guardians, etc., May Convey Real Estate to Company.

994. SEC. 23. If it shall become necessary, for any of the purposes afore-

said, for such company to acquire any real estate, or any right, title, or interest therein, which is the property of an infant, idiot, or insane person, the guardian, executor, or administrator (as the case may be), may sell and convey the same to said company, but neither such sale or conveyance shall be valid for any purpose, until the same shall have been approved by the Judge of the proper court; and said Judge is hereby authorized to examine such deeds and conveyances, and if he shall deem the same just and proper, he shall approve the same, and thereupon such conveyances shall have the same force and effect, for the purposes in this section mentioned, as if the same had been executed by persons competent to convey lands in their own names. *As amended, Stats. 1869, 90.*

Special Proceedings to Acquire Real Estate.

995. SEC. 24. Such company may acquire any real estate, or any right, title, interest, estate, or claim, therein or thereto, necessary for the purposes of said company, as hereinbefore provided, by means of the special proceedings prescribed in this Act. The said special proceedings shall be substantially as follows: The said company shall file in the Clerk's office of the district court, in the county in which said real estate is situated, a petition verified according to law, stating therein the name of the company, the time when it was incorporated, that it still continues in legal existence, the principal termini of the proposed road, the description by metes and bounds, or by some accurate designation of the tract or tracts of lands which said company desire to appropriate for the purposes in the foregoing section mentioned; that said tract or tracts of land are necessary for said purposes; that the line of said railroad has been surveyed, and a map thereof made (a copy of which shall be filed with the said petition); that said line has been adopted as the route of said railroad, and the names of the persons in possession of said tract or tracts of land, and of those claiming any right, title, or interest therein, as far as the same can be ascertained by reasonable diligence. *As amended, Stats. 1869, 90.*

For condemnation of property, see Secs. 3918-3930.

Rights of Defendants.

996. SEC. 25. The persons in occupation of said tract or tracts of land, and those having any right, title, or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

Hearing of Petition.

997. SEC. 26. The said court, or the Judge thereof, either in term or vacation, shall, by order, appoint the time for the hearing said petition, and such hearing may be had, and all orders in said proceedings may be made by the said court, or the Judge thereof, either in term time or vacation.

To Notify Owners—Publication of Notice.

998. SEC. 27. The said company shall cause all the occupants and owners of said tract or tracts of land, so far as the same can be ascertained by reasonable diligence, who reside in said county, to be personally notified of the pendency of the said petition at least ten days before the hearing thereof, and if any of said occupants or owners are unknown, or do not reside in said county, and have not been personally notified of the pendency of said petition, said company shall cause a notice stating the filing of said petition, the object thereof, the tracts of land sought to be appropriated, and the time and the place of the hearing of said petition, to be published for four successive weeks previous to the time of hearing said petition, in a newspaper published in said county, or, if none is published in said county, then in a newspaper published nearest to said county.

To Appoint Commissioners—Vacancy.

999. SEC. 28. The defendants to said petition may appear and show cause against said petition, on or before the time for the hearing thereof, or such other time as the hearing may be continued to, and upon satisfactory proof being made that the defendants have been duly notified of the pendency of said petition, as herein prescribed, and upon the hearing of the allegations and proofs of the said parties, if the said court, or Judge, shall be satisfied that the said lands, or any part thereof, are necessary or proper for any of the purposes mentioned in said petition, then such court, or Judge, shall appoint three competent and disinterested persons as commissioners, one of whom shall be selected from among the persons, if any, named for that purpose by said company, and one shall be selected from among the persons, if any, named on the part of any of the defendants, to ascertain and assess the compensation to be paid to any person or persons having or holding any right, title, or interest in or to each of said tracts of land, for and in consideration of the appropriation of such land to the use of said company. If any vacancy occur among said commissioners, by reason of any one or more of them refusing or neglecting to act, or by any other means, one or more commissioners may be appointed by said court, or Judge, to fill such vacancy, upon notice being given of such vacancy, as said court, or Judge, may direct.

Meeting of Commissioners.

1000. SEC. 29. The said court or Judge shall appoint the time and place for the first meeting of said commissioners, and the time for filing of their report, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties. The said commissioners, or a majority of them, shall meet at the time and place as ordered, and, before entering on their duties, shall be duly sworn to honestly, faithfully and impartially perform the duties imposed upon them; and any one of them may issue subpoenas for witnesses for either of said parties, and may administer oaths; and said commissioners may adjourn from place to place and from time to time, as may be necessary for the proper discharge of their duties.

Compensation—To File Report—Adverse Claims.

1001. SEC. 30. The said commissioners shall proceed to view the several tracts of land as ordered by said court, or Judge, and shall hear the allegations and proofs of said parties, and shall ascertain and assess the compensation for the land sought to be appropriated, to be paid by said company to the person or persons having or holding any right, title, or interest in or to each of the several tracts of land; and in ascertaining and assessing such compensation, they shall take in consideration and make allowance for any benefit or advantages that in their opinion will accrue to such person or persons by reason of the construction of the railroad as proposed by said company; and if the said railroad company shall, in their petition filed in said special proceedings, offer or agree to make good and sufficient fences on the line of their said railroad, or any portion thereof, or to make good and sufficient cattle guards where fences may cross said line of railroad, at such places and such times as the same may be necessary, no sum or price for such fences shall be included in the compensation or damages to be awarded by said commissioners; but such railroad company shall not be required to construct fences on the line of their railroad where the same passes through uninclosed tracts of lands, nor until inclosures shall be made abutting upon the property of said company; and such commissioners shall, on or before the time or times as ordered by said court, or Judge, file in said Clerk's office their report, signed by them, setting forth their proceedings in the premises, and they may include all of said tracts in one report, or they may make several reports, including one or more of said tracts of land, if the court, or Judge, shall so order, or if they shall deem it proper. In case there are adverse or conflicting claims to the compensation assessed for any tract of land, or any right, title, or interest therein, thus sought to be appropriated, the parties thus asserting such claims shall pre-

sent the same, by petition, to the court, or Judge, after the report of the commissioners shall have been filed, and the said court, or Judge, shall proceed to hear and determine the same; and in such case, said company may pay the amount of such compensation to the Clerk of said court, to abide the order of the court, or Judge in said proceeding, and said company shall not be liable for any of the costs caused by the adjudication of such conflicting claims.

EMINENT DOMAIN FOR RAILROAD—REPORT OF COMMISSIONERS—WHAT MUST SHOW. V. & T. R. Co. v. Lovejoy, 8 Nev. 100.

"COMPENSATION FOR LAND TAKEN" IS NOT MERE "MARKET VALUE." The statute providing for "compensation" and "damages" to be awarded for lands condemned for railroad purposes does not contemplate the giving of the mere "market value" of the land taken; and if it did, it would in that regard be unconstitutional. V. & T. R. Co. v. Henry, 8 Nev. 165.

MEANING OF "JUST COMPENSATION"—REPORT OF COMMISSIONERS—"GOOD CAUSE" TO SET ASIDE COMMISSIONERS' REPORT, ETC. Id.

New Trial—Report Set Aside.

1002. SEC. 31. The said company, or any of said defendants, if dissatisfied with the report may, within twenty days after the time for the filing of said report, and after ten days' notice to the parties interested, move to set aside the report, and to have a new trial as to any tract of land, upon good cause shown therefor; and the said court or Judge shall set aside the report as to such tract of land, and may recommit the matter to the same or to other commissioners, who shall be ordered to proceed in like manner as those first appointed; but such matter shall not be more than twice recommitted to commissioners.

Confirmation of Reports.

1003. SEC. 32. Upon the expiration of twenty days after the filing of said report or reports, or at such further time as may be appointed therefor, if the motion and notice shall not have been made and given, as aforesaid, and if the proceedings of said commissioners appear to have been correctly and properly done, the said court, or Judge, shall confirm each of said reports, and certify the same thereon.

Record of Reports—Costs.

1004. SEC. 33. Each of said reports, and the certificates thereon, upon the compensation therein named being paid, shall be recorded in the Recorder's office of said county by said company. The said court, or Judge, may make all such orders as may be necessary or proper in the special proceedings provided for in this Act, and shall cause the pleadings and proceedings to be amended whenever justice shall require it to be done, and shall direct the manner of the service of all orders and notices not herein specially provided for. Costs in such special proceedings shall be taxed by the Clerk at the rates prescribed in the fee bill for said county in civil actions, and shall be paid by said company, except in case where a defendant shall move for a new trial, and the compensation assessed by the commissioners shall not be increased more than ten per cent upon the previous assessment, in which case such defendant shall pay the cost.

Defective Titles—Proceedings Instituted.

1005. SEC. 34. If the title attempted to be acquired by virtue of the provisions of this Act, shall be found to be defective from any cause, such company may again institute proceedings to acquire the same, as in this Act prescribed; and at any stage of such new proceedings, or of any proceedings under this Act, the court, or Judge in chambers, may rule or order in their behalf made, authorize such company, if already in possession, to continue in the use and possession, and if not in possession, to take possession of, and use such premises during the pendency of, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such company on account thereof; *provided*, such

company shall pay a sufficient sum in court, or give security, to be approved by such court, or Judge, to pay the compensation in that behalf when ascertained.

Passage of Title.

1006. SEC. 35. Upon the report of the commissioners being filed for record, as above provided for, and upon the payment or tender of the compensation and costs, as prescribed in this Act, the real estate, or the right, title, or interest therein, described in such report, shall become the property of said company for the purpose of its incorporation, and shall be deemed to be acquired for, and appropriated to, public use.

Payment or Tender.

1007. SEC. 36. Such company shall, within thirty days after the final confirmation of the report as aforesaid, pay or tender the sum of money ascertained and assessed by said commissioners as and for the compensation of each tract of land described in said report, of which the compensation was ordered by said court or Judge, to be ascertained and assessed as aforesaid; and said payment or tender may be made to the person or persons owning said tract of land, or having or holding any right, title, or interest therein, according to the amount or extent of the right, title, or interest, owned or held therein by such person or persons, or said payment may be made to the said Clerk for said persons, and the same shall be deemed and taken as a payment to such person or persons, and shall be as effectual for all purposes whatsoever as if the said sum of money had been personally paid to each and all of the persons entitled thereto.

Court to Order Payment.

1008. SEC. 37. The said court or Judge shall, at the time of the payment of the said sum of money to the said Clerk, or at such other time or times as may be ordered, direct and order the same to be paid over to the person or persons who shall, upon satisfactory proof, appear to be entitled thereto.

Definition of "Person."

1009. SEC. 38. In all the proceedings in relation to the sale or appropriation of real estate, and ascertaining and receiving the compensation therefor, for railroad purposes, as prescribed in this Act, the term "person" shall be deemed to include municipal or other incorporations.

Duties of Clerk of Court.

1010. SEC. 39. The minutes of the proceedings had before such Judge shall be entered by said Clerk in the same manner, and with the same force and effect, as if the proceedings were had before said court in term time.

Companies May Consolidate—Notice—To Maintain Fence—Not Liable in Certain Cases—Company May Recover Damages.

1011. SEC. 40. It shall be lawful for two or more railroad companies to amalgamate and consolidate their capital stock, debts, property, assets and franchises, in such manner as may be agreed upon by the Board of Directors of such companies so desiring to amalgamate and consolidate their interests; but no such amalgamation or consolidation shall take place without the written consent of three-fourths of the value of all stockholders in interest of each company; and no such amalgamation or consolidation shall in any way relieve such companies, or stockholders thereof, from any and all just liabilities; and in case of such amalgamation or consolidation, due notice of the same shall be given by advertising for one month in at least one newspaper in each county, if there shall be one published therein, into or through which such roads shall run, and also for the same length of time in one paper published in Virginia City and one at the capital of the state; and when the consolidation and amalgamation is completed a copy of the new articles of association shall be filed in the office of the Secretary of State. It shall be the duty of the railroad company to make and maintain a good and sufficient fence on either or both sides of their property; and in

case any company do not make and maintain such fence, if their engine or cars shall kill, maim, or destroy any cattle, or other domestic animals, when they stray upon their line of road, where it passes through or alongside of the property of the owners thereof, they shall pay to the owner or owners of such cattle, or other domestic animal, a fair market price for the same, unless the owner or owners of the animal or animals so killed, maimed or destroyed, shall be negligent or at fault. In any case, where the railroad company have heretofore, or may hereafter, pay to the owner or owners of the land, through which, or alongside of which, their road is or may be located, an agreed price for making and maintaining such fence, or whenever the cost of such fence has been or may be included in the amount of damages allowed and paid for the right of way for such railroad, such company shall be entirely relieved and exonerated from all claims and awards of damages arising out of the killing or maiming any animals, as aforesaid, in favor of all persons, or their successors or assigns, who shall thus fail to construct and maintain such fence. And the owner or owners of such animals shall become responsible to the railroad company for any damage or loss which may accrue to such company from such animals being upon their railroad track, by reason of the non-construction of such fence by said owner, unless it can be proven that such loss or damage accrued by reason of the negligence of such company, its officers, agents, or employees.

LIABILITY OF RAILROADS FOR INJURIES TO DOMESTIC ANIMALS. The leading principle of the numerous cases in reference to the liability of railroad companies for injuries to domestic animals, is that such liability is founded only upon negligence or omission of duty on the part of the company. *Walsh v. V. & T. R. Co.*, 8 Nev. 110.

MERE KILLING OF ANIMAL BY RAILROAD NOT EVIDENCE OF NEGLIGENCE. The mere killing of a domestic animal by a railroad train is not evidence of negligence on the part of the railroad company. *Id.*

CONSTRUCTION OF RAILROAD LAW AS TO FENCES—ABOVE SECTION CONSTRUED. *Id.*

Bell to Be Rung—Penalty.

1012. SEC. 41. A bell of at least twenty pounds weight shall be placed on each locomotive engine; and be rung at a distance of at least eighty rods from the place where the railroad shall cross any street, road or highway, under a penalty of one hundred dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer and the other half to the state; and said corporation shall also be liable for all damage which shall be sustained by any person by reason of such neglect.

EVIDENCE REGARDING RINGING OF BELL. *Bunting v. C. P. R. Co.*, 16 Nev. 277.

Checks on Baggage—Penalty.

1013. SEC. 42. A check shall be affixed to every package or parcel of baggage, when taken for transportation, by the agent or employee of such railroad company, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check be refused on demand, the railroad company shall pay to such passenger the sum of twenty dollars, to be recovered in an action for debt, and, further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his or her said fare, the same shall be returned by the conductor in charge of the train; and if, on producing said check, his or her baggage shall not be delivered to him or to her by the agent or employee of said railroad company, he or she may, himself or herself, be a witness in any suit brought by him or her to recover the value thereof, to prove the contents and value of said baggage.

Map to Be Filed With Secretary of State.

1014. SEC. 43. Every railroad company in this state shall, within a reasonable time after their road shall be finally located, cause to be made a map and profile thereof, and of the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the

same in the office of the Secretary of State; and also like maps of the parts thereof located in different counties, and file the same in the office of the Clerk of the county in which said parts of said road shall be, there to remain as of record forever. The said maps and profiles shall be certified by the Chief Engineer, the Acting President, and Secretary of such company, and copies of the same, so certified and filed as aforesaid, shall be kept in the office of the Secretary of the company, subject to examination by all parties interested.

To Make Report to Secretary of State—Report Shall State What.

1015. SEC. 44. Every railroad company operating its line or lines of railroad wholly or in part within this state, shall make an annual report to the Secretary of the State of Nevada of the operations of such railroad company during the year ending on the thirtieth day of June, in each last preceding year, which report shall be verified by the oaths of the President or Acting Superintendent of the operations and business of such company, and also by the oaths of the Secretary and Treasurer of such company; and shall file such report in the office of the Secretary of State, aforesaid, on or before the first day of September in each year, and shall state in such report:

First—The capital stock of such company, and the actual cash capital paid in on such stock by the members of such company.

Second—The amount of cash expended for the purchase of lands for the construction of the road of such company, the cost of the construction of such road, and the cost of buildings, engines and cars, respectively, used by such company in this state.

Third—The amount and the nature of the indebtedness of such company, and the amount due to such company.

Fourth—The amount received by such company for the transportation of all passengers, and all freight, property, mails and express matter over the road or roads of such company, together with all amounts received by such company from all other sources in connection with such road.

Fifth—The amount of freight of all kinds transported over the road or roads of such company, specifying the quantity of such freight in tons.

Sixth—The amount paid by such company for the repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running such road.

Seventh—The number and amount of dividends declared by such company, and when such dividends were paid.

Eighth—The number of engine-houses and shops, together with the number of engines and cars, and the character of the same.

Ninth—The net profits of such company during such year. And if either of the officers above named shall fail to make and file such report as above provided, or if either of such officers shall fail to make any and every statement required by this section of this Act to be made on or before the first day of September in each year, such company so neglecting by its said officers to comply with any of the requirements of this section of this Act shall each day thereafter forfeit and be liable to pay as a penalty to the State of Nevada for such neglect the sum of five hundred dollars daily for each and every day, from and after the first day of September of each year, until such report containing such statement as above provided shall be filed, as in this section provided; and the Attorney-General of the state shall commence an action in the name of the State of Nevada for the recovery of the sum of such penalties monthly, on the first Monday of each and every month thereafter, and the court shall render judgment therefor against such company until such report containing such statement shall be filed with the Secretary of State; and such action or actions shall not be dismissed or compromised, except upon the full payment of the sum of such penalties, together with all costs of such actions, and executions shall issue against the property of such company until such judgments shall be fully satisfied. *As amended, Stats. 1889, 117.*

Regulation of Time and Accommodations.

1016. SEC. 45. Every such company shall start and run their cars for the transportation of persons and property, at such regular times as they shall fix by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or to be offered, for transportation at the place of starting and the junction of other railroads, and at siding and stopping places, established for receiving and discharging way passengers and freight, and shall take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

Company to Pay Damages.

1017. SEC. 46. In cases of refusal by such company, or their agents, so to take and transport any passengers or property, or to deliver the same at the regular appointed places, such company shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

SEC. 47 repealed, Stats. 1891, 26.

Company Not Liable, When.

1018. SEC. 48. In case any passenger on any railroad shall be injured on the platform of a car, or any baggage, wood, gravel, or freight cars, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars then in the train, or in violation of verbal instructions given by any officer of the train, such company shall not be liable for the injury; *provided*, said company, at the time, furnished room inside of its passenger cars sufficient for the accommodation of its passengers. •

Conductor May Eject Passengers.

1019. SEC. 49. If any passenger shall refuse to prepay his fare, or toll, upon demand, it shall be lawful for the conductor of the train, and the employees of the company, to put him out of the cars at any stopping place the conductor may elect.

Officers to Wear Badge.

1020. SEC. 50. Every conductor, baggage master, engineer, brakeman, or other employee of any railroad company employed in a passenger train, or at stations for passengers, shall wear upon his hat, or cap, or in some conspicuous place on the breast of his coat, a badge which shall indicate his office or station, and the initial letters of the name of the company by which he is employed. No conductor, or collector, without such badge, shall demand, or be entitled to receive, from any passenger, any fare, toll, or ticket, or exercise any of the powers of his office, or station, and no one of said officers or employees, without such badge, shall have any authority to meddle or interfere with any passenger or property.

Rate to Charge - Proviso.

1021. SEC. 51. It shall be unlawful for any such railroad company to charge more than ten cents per mile for each passenger, and twenty cents per mile for each ton of freight transported on its road; and for every transgression of such limitation the company shall be liable to the party suffering thereby treble the entire amount of fare or freight so charged to such party; *provided*, that in no case shall the company be required to receive less than thirty-five cents for any one lot of freight for any distance.

Penalty for Intoxication.

1022. SEC. 52. If any person, while in charge of a locomotive engine running upon any railroad for such company, or while acting as a conductor of a car, or train of cars, on any such railroad, be intoxicated, he shall be guilty of a misde-

meanor, and, on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months.

Injuries to Works of Company—Penalty.

1023. SEC. 53. If any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction, or work of any kind of any such company, or any engine, machine, or structure, or any matter or thing appertaining to the same, or track of said road, or any property or thing belonging to or appertaining to such railroad, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, such person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to said company treble the amount of damages sustained by means of such offense, besides a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and if, by reason of any unlawful act, any accident should happen to life or limb of any person riding or being in the cars of such railroad, then such person or persons shall be guilty of felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for any term not less than three nor more than ten years. It shall be unlawful for any person or persons engaged in mining or other pursuits, to tunnel, drift, or in any manner excavate under or upon any land belonging to any railroad company, without the consent of such company; and any person so offending shall be liable to the fine and imprisonment hereinbefore mentioned, whether injury results to any person by reason thereof or not.

Time Granted for Operation.

1024. SEC. 54. If such railroad company shall not, within four years after the filing of its original articles of association, begin the construction of its road and expend thereon at least five per cent of the amount of its capital stock, and finish the road and put it in full operation within six years, its Act of incorporation shall be void. *As amended, Stats. 1893, 87.*

False Notice or Report—Liability For.

1025. SEC. 55. If any certificate or report made, or public notice given, by the officers of such company, in pursuance of the provisions of this Act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof, and shall likewise be guilty of a misdemeanor, and shall be fined in any sum not exceeding one thousand dollars, in any court having jurisdiction, and disqualified from holding any office of trust or profit in such company.

Payment of Dividends When Insolvent—Liability—Acceptance to Be Filed in Office of Secretary of State.

1026. SEC. 56. If the Directors of such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would make it insolvent, they shall be jointly and severally responsible for all the debts of the company then existing, and for all that shall thereafter be contracted, so long as they shall respectively remain in office; *provided*, that if any of the Directors shall be absent at the time of making the dividends, or shall object thereto, and shall, within thirty days thereafter, or after their return, if absent, file a certificate of their absence, or objections, with the Secretary of the company, and with the Clerk of the county or district court of the county in which the principal office of said company is located, they shall be exempt from all liability. All the existing railroad companies in this state may acquire and may be possessed of all the powers, rights, and benefits conferred by this Act, fully and completely, by filing a written acceptance thereof in the office of the Secretary of the State, signed by all the Directors of said company, and attested by the President and Secretary thereof, with the seal of such company affixed

thereto; and the acceptance of any part of this Act shall be deemed and taken to be an acceptance of the whole Act, and a surrender of the Act or Acts under which the company may be organized. Thereupon such company shall possess all of such powers, rights, and benefits so accepted, and be subject to all of the obligations and restrictions herein specified, as fully and completely as they would have had and been if organized under this Act.

Kind of Rail to Be Used in Construction—Proviso.

1027. SEC. 57. All railroads built by companies incorporated under the provisions of this Act shall be constructed with the best quality of iron rail known as T rail and H rail, or other patterns of equal utility; *provided*, the provisions of this section shall neither apply to tracks laid down in streets of incorporate cities or towns, nor other railroads operated by animal power.

Acts Repealed.

1028. (SEC. 2.) Section two of an Act entitled an Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved March twenty-second, eighteen hundred and sixty-five; approved March nine, eighteen hundred and sixty-six, and an Act entitled an Act to amend an Act entitled an Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved March twenty-second, eighteen hundred and sixty-five; approved March ninth, eighteen hundred and sixty-six; approved February sixteenth, eighteen hundred and sixty-nine, are hereby repealed. *As amended, Stats. 1871, 65.*

Street Railroads.

1029. SEC. 58. Corporations may be formed under this Act for the purpose of constructing, running, operating, and maintaining a street railroad, or railroads, being wholly within the limits of a city, and county, and town, under a franchise or franchises heretofore given to any such company or companies.

1030. *Acts noted below are not considered of sufficient general interest to warrant reprinting:*

1. Act to cure defects in articles of incorporation of railroad companies, Stats. 1879, 81.
2. Act to encourage the construction of cheap transportation lines, Stats. 1875, 157.
3. Act to aid in carrying out the provisions of the Pacific Railroad and Telegraph Act of Congress, Stats. 1866, 254.

An Act concerning petitions of taxpayers in aid of the construction of railroads in the several counties of this state.

Approved March 3, 1881, 120.

Railroad Property, in Cases of Petition, Excluded from Computation.

1031. SECTION 1. In any and all counties in this state wherein county aid is proposed to be extended to encourage the construction of a railroad, and the issuance of the bonds of such county, for such purpose, is dependent upon a petition of persons representing a majority of the taxable property in such county, the amount of property therein owned by any railroad company shall be excluded from computation in ascertaining the total amount of taxable property, in such county, and in further ascertaining what shall constitute a majority of the taxable property therein.

An Act to prevent discrimination in fares and freights by railroad companies whose railroads run through the State of Nevada, or by railroad companies, the terminus or termini of whose railroads are within the State of Nevada.

Approved February 12, 1879, 28.

What Constitutes Discrimination—Transportation Facilities Furnished—Proviso.

1032. SECTION 1. It shall be unlawful for any person or persons engaged alone or associated with others in the transportation of property by railroad, whose railroads are wholly or in part in the State of Nevada, from any boundary of said state, to any point in said state, or from any point in said state to any boundary of said state, or from one point in said state to any other point in said state, directly or indirectly, to charge to or receive from any person or persons any greater or less rate or amount of freight, compensation, or reward than is charged to or received from any other person or persons for like and contemporaneous service in the carrying, receiving, delivering, storing, or handling of the same; and all persons engaged as aforesaid, shall furnish, without discrimination, the same facilities for the carriage, receiving, delivery, storage, and handling of all property of like character, carried by him or them, and shall perform with equal expedition the same kind of services connected with the contemporaneous transportation thereof as aforesaid. No break, stoppage, or interruption, nor any contract, agreement, or understanding shall be made to prevent the carriage of any property from being, and being treated, as one continuous carriage in the meaning of this Act, from the boundary line of the State of Nevada, to the place of destination if within said state, or from the place of shipment if within said state, to the boundary of said state, or from the place of shipment to the place of destination if said place of shipment and destination be within said state, unless such stoppage, interruption, contract, arrangement, or understanding was made in good faith for some practical and necessary purpose, without any intent to avoid or interrupt such continuous carriage, or to evade any of the provisions of this Act.

Unlawful to Allow Rebates, Drawbacks, etc.

1033. SEC. 2. It shall be unlawful for any person or persons engaged in the transportation of property as aforesaid, directly or indirectly, to allow any rebate, drawback, or any other advantage in any form, upon shipments made or services rendered as aforesaid by him or them.

Unlawful to Make Combinations to Prevent Continuous Carriage.

1034. SEC. 3. It shall be unlawful for any person or persons engaged in the carriage, receiving, storage, or handling of the property, as mentioned in section one of this Act, to enter into any combination, contract, or agreement by changes of schedule, carriage in different cars, breaking car loads into less than car loads, or by any other means, with intent to prevent the carriage of such property from being continuous from the boundary line of the State of Nevada to the place of destination, if such place of destination be within said state, or from the place of shipment, if such place of shipment be within said state, to the boundary of said state, or from the place of shipment to the place of destination, if said places of shipment and destination be within said state, whether carried on one or several railroads; and it shall be unlawful for any person or persons, carrying property as aforesaid, to enter into any contract, agreement, or combination for the pooling of freights, or to pool the freights of different and competing railroads, by dividing between them the aggregate or net proceeds of the earnings of such railroads or any portion of them.

Short and Long Haul.

1035. SEC. 4. It shall be unlawful for any person or persons engaged in the transportation of property, as provided in section one of this Act, to charge or receive any greater compensation per car load, or part thereof, of similar prop-

erty, for carrying, receiving, storing, forwarding, or handling the same for a shorter than for a longer distance in one continuous carriage. *As amended, Stats. 1879, 112.*

To Adopt Schedule—What Shall State—Schedules, Where Posted.

1036. SEC. 5. All persons engaged in carrying property, as provided in section one of this Act, shall adopt and keep posted up schedules, which shall plainly state: First—The different kinds and classes of property to be carried. Second—The different places between which such property shall be carried. Third—The rates of freight and prices of carriage between such places, and for all services connected with the receiving, delivery, loading, unloading, storing, or handling the same. Such schedules may be changed from time to time as hereinafter provided. Copies of such schedules shall be printed in plain, large type, at least the size of ordinary pica, and shall be kept plainly posted for public inspection, in at least two places in every depot where freights are received or delivered, and no such schedule shall be changed in any particular, except by the substitution of another schedule containing the specifications above required, which substitute schedule shall plainly state the time when it shall go into effect, and copies of which, printed as aforesaid, shall be posted as above provided at least five days before the same shall go into effect, and shall remain in full force until another schedule shall, as aforesaid, be substituted. And it shall be unlawful for any person or persons engaged in carrying property on railroads, as aforesaid, after thirty days after the passage of this Act, to charge or receive more or less compensation for the carriage, receiving, delivery, loading, unloading, handling, or storing of any of the property contemplated by section one of this Act, than shall be specified in such schedule as may at the time be in force.

Provisions of This Act to Apply to All Property—All Railroads to Fix Their Own Rates.

1037. SEC. 6. Each and all the provisions of this Act shall apply to all property, and the receiving, delivery, loading, unloading, handling, storing, or carriage of the same, on one actually or substantially continuous carriage, as provided for in section one of this Act, and the compensation therefor, whether such property be carried wholly on one railroad or partly on several railroads, and whether such services are performed, or compensation paid, or received, by or to one person alone or in connection with another or other persons; *provided*, that each and every railroad company, as aforesaid, shall fix its own rate or rates in its schedule; and such rate or rates, in such schedule so fixed, shall not govern or affect the rate or rates of any other railroad company; *and, provided further*, that such rate or rates, in such schedule so fixed, shall not exceed the rate or rates now allowed to be charged by law.

Penalties for Violation—Amount of Damages, How Recovered—Penalty—Informer Receives One-Half of Penalty—Procedure—Limitations, etc.

1038. SEC. 7. Each and every act, matter, or thing in this Act declared to be unlawful, is hereby prohibited, and in case any person or persons, as defined in this Act, engaged as aforesaid, shall do, suffer or permit to be done, any act, matter, or thing, in this Act prohibited or forbidden, or shall omit to do any act, matter, or thing, in this Act required to be done, or shall be guilty of any violation of the provisions of this Act, such person or persons shall forfeit and pay to the person or persons who may sustain damages thereby, a sum equal to three times the amount of damages so sustained; to be recovered by the person or persons so damaged, by suit in any district court of the State of Nevada where the person or persons causing such damage can be found, or may have an agent, office or place of business; and the person or persons so offending shall for each offense forfeit and pay a penalty of not less than two thousand dollars, to be recovered by the State of Nevada, by action in any district court in the State of Nevada aforesaid, one-half of such penalty or penalties, when collected, to be paid to the informer. Any action to be brought as aforesaid, to recover any such

penalty or damages, may be considered, and if so brought, shall be regarded as a subject of equity jurisdiction and discovery, and affirmative relief may be sought and obtained therein. In any such action, so brought as a case of equitable cognizance, preliminary or final injunctions may, without allegation or proof of damage to any plaintiff or complainant, be granted upon proper application, restraining, forbidding and prohibiting the commission or continuance of any acts, matters, or things, within the terms or purview of this Act prohibited or forbidden. In any action aforesaid, and upon any application for any injunction above provided for, any Director, officer, receiver or trustee of any corporation or company aforesaid, or any receiver, trustee or person aforesaid, or any of them alone, or with any agent of any such corporation or company, receiver, trustee or person aforesaid, or any other person or persons, party or parties, may and shall be compelled to attend, appear and testify and give evidence; and no claim that such testimony or evidence might, or might tend to, criminate the person testifying or giving evidence, shall be of any avail; but such evidence or testimony shall not be used as against such person on the trial of any indictment against him. The attendance and appearance of any of the persons who, as aforesaid, may be compelled to appear and testify, and the giving of the testimony or evidence by the same respectively, and the production of books and papers thereby may and shall be compelled, the same as in the case of any other witnesses; and in case any such deposition or evidence, or the production of any books or papers, may be desired or required for the purpose of applying for or sustaining any injunction aforesaid, the same, and the production of books and papers, may and shall be had, taken and compelled by or before any Clerk of the district court in any of the judicial districts in the State of Nevada, or in any manner provided for or to be provided for, as to the taking of other depositions or evidence, or the attendance of witnesses, or the production of other books or papers in or by the statutes of Nevada. In actions to be brought as aforesaid, damages sustained in the period of a month or part of a month, may be regarded as and counted or declared upon or complained of generally, and as one separate cause of action; and so, whether such damages be sustained in one month or in different months; and such separate causes of action may be joined in the same action. No action aforesaid shall be sustained unless brought within one year after the cause of action shall accrue.

Who Liable—Penalty.

1039. SEC. 8. Any Director or officer of any corporation or company acting or engaged as aforesaid, or any receiver or trustee, lessee or person acting or engaged as aforesaid, or any agent of any such corporation or company, receiver, trustee, or person aforesaid, or of any of them alone, or with any other corporation, company, person, or party, who shall directly or indirectly do, or cause, or willingly suffer or permit to be done, any act, matter or thing in this Act prohibited or forbidden, or directly or indirectly aid or abet therein, or shall directly or indirectly omit or fail to do any act, matter or thing in this Act required to be done, or cause or willingly suffer or permit any act, matter or thing, so directed or required to be done, not to be so done, or shall directly or indirectly aid or abet any such omission or failure, or shall directly or indirectly be guilty of any infraction of this Act, or directly or indirectly aid or abet therein, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two thousand dollars.

Property of United States Excepted.

1040. SEC. 9. Nothing in this Act shall apply to the carriage, storage, receiving, handling or forwarding of the property of the United States at lower rates of freight and charges than to the general public, or to the transportation of articles free or at reduced rates for charitable purposes, or to or from public fairs or expositions for exhibition, or to the transportation of material or supplies for the

construction of other railroads within the state, or from a point within the state to a point beyond its boundaries.

Meaning of "Person or Persons."

1041. SEC. 10. The word "person or persons" as used in this Act, except where otherwise provided, shall be construed and held to mean person or persons, company or companies, corporation or corporations, officer or officers, receiver or receivers, trustee or trustees, lessee or lessees, agent or agents, or other person or persons acting or engaged in any of the matters and things mentioned in this Act.

An Act authorizing the sale by any railroad corporation owning any railroad in this state, of its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any Act of Congress; also authorizing the corporation purchasing the same to operate such railroad, to build and operate extensions or branches thereof, and for that purpose to exercise the power of eminent domain.

Approved March 1, 1899, 32.

May Exercise the Power of Eminent Domain—To File Copy of Certificate With County Recorder of Each County.

1042. SECTION 1. Any railroad corporation owning any railroad in this state, may sell, convey and transfer its property and franchises, or any part thereof, to any other railroad corporation, whether organized under the laws of this state or of any other state or territory, or under any Act of Congress; and any such other railroad corporation receiving such conveyance may hold and operate such railroad franchises and property within this state, build and operate extensions or branches thereof, and for that purpose exercise the power of eminent domain, and do any other business in connection therewith, as fully and effectually to all intents and purposes as if such corporation were organized under the laws of this state; *provided, nevertheless*, that before any corporation incorporated or organized otherwise than under the laws of this state, shall acquire any railroad in this state by virtue of this law, it shall file in the office of the County Recorder of each county in which the same shall be situated, a copy of its certificate or articles of incorporation or of the Act or law by which it was created, with a certified list of its officers, in the manner and form required by section one of an Act of the Legislature of the State of Nevada entitled "An Act to amend an Act entitled 'An Act to require foreign corporations to furnish evidence of their incorporation and corporate name,' approved March 3, 1869," approved January 30, 1877.

See Sec. 897.

An Act to provide for the proper care of live stock by transportation companies.

Approved March 7, 1885, 73.

Duties of Railroad Companies in Transporting Live Stock.

1043. SECTION 1. No company operating any railroad in this state shall, in carrying and transporting any cattle, sheep or hogs, in car-load lots, confine the same in cars for a longer period than thirty-six consecutive hours without unloading for rest, water and feeding, for a period of at least ten consecutive hours. In estimating such time of confinement the period in which the animals have been confined without such rest on connecting roads shall be computed.

May Charge Expense of Feeding Stock to Owners in Certain Cases.

1044. SEC. 2. In case the owner or person in charge of such animals refuse or neglect to pay for the feed and care of the animals so rested, the railroad com-

pany may charge the expense thereof to the owner or consignee, and retain a lien upon the animals until the same is paid.

An Act to provide for constructing and maintaining telegraph lines in the State of Nevada.

Approved February 9, 1866, 61.

Telegraph Lines May Be Constructed.

1045. SECTION 1. Any person or persons, company, association, or corporation, desiring to do so, may construct and maintain, or if already constructed, may maintain, or if partially constructed, may complete and maintain, within this state, a telegraph line or lines, by complying with section two of this Act.

To Sign and Acknowledge Certificate—File and Record in Office of Secretary of State.

1046. SEC. 2. The person, or persons, or the President or the managing agent of the company, association, or corporation mentioned in section one, shall make, sign, and acknowledge before some officer authorized by law to take acknowledgments of deeds, a certificate in writing, setting forth the name or names of the person or persons, company, association, or corporation (as the case may be) by whom said line is to be operated, and the names of the points or places constituting the termini of said line within this state, and a general description of the route of said line, and shall file and cause the same to be recorded in the office of the Secretary of State, for which said person or persons, company, association, or corporation shall pay the Secretary of State, for the benefit of the library fund, the sum of five dollars, and also twenty-five cents for each folio contained in said certificate. The record of said certificates shall give constructive notice to all persons of the matter therein contained, and the work of constructing such line, if not already commenced or completed, within thirty days after the filing of the certificate aforesaid, and shall be continued, with all reasonable dispatch, until completed.

May Construct Line Over Public or Private Lands—Proviso.

1047. SEC. 3. The person or persons, company, association, or corporation named in the certificate (provided for in section two), and their assigns, may construct, or if constructed, maintain, or if partially constructed, complete and maintain, their line of telegraph, described in their certificate, filed as aforesaid, over and through any public or private lands, and along or across any streets, alleys, roads, highways, or streams within this state; *provided*, they do not obstruct the same; and may operate the said telegraph line between the termini of the same, and have and maintain offices and stations at any city, town, place, or point along said line, and shall be entitled to demand, receive, and collect for dispatches and messages transmitted over such line, such sum or sums as he, she, they, or the officers of the company, association, or corporation (as the case may be), may deem proper.

Rates to Be Posted at Each Office—Higher Charge a Misdemeanor.

1048. SEC. 4. The rates of charges so established shall be written, painted, or printed, in a plain and legible manner, and posted in each office on such line; and if any person or persons, company, association, or corporation, who shall construct, put in operation, and maintain any line of telegraph, shall demand or collect any higher or greater rates of charges than those specified and so posted, he, she, or they, or the officers or agents of the company, association, or corporation so doing, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any court of competent jurisdiction, shall for each offense, be punished by fine, in any sum not exceeding one thousand nor less than one hundred dollars, and, in default of payment of such fine, may, in the discretion of the court, be committed to the county jail until such fine be paid; one-half of all such fines

shall go to the informer, and one-half to the school fund of the county in which such prosecution is had, but in no case shall the county be responsible for the costs in any such prosecution.

Lines to Be Governed by the General Laws of the State—Proviso.

1049. SEC. 5. Such line or lines of telegraph as may avail themselves of the provisions of this Act, shall also be governed, in all respects, by the general laws of the state regulating telegraph lines; do the business of side lines, and transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, and all damages sustained thereby, to be recovered, with costs of suit, by the person or persons whose dispatch is postponed out of its order; *provided*, that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest out of its order; *and, provided further*, that preference may be given to official dispatches for the detection and capture of criminals; messages on public business may be sent by the State of Nevada over such lines free of charge.

Right of Way—Appraisers—Tender of Appraised Value—Appeal May Be Taken.

1050. SEC. 6. Any person or persons, company, association, or corporation, or their assigns, who are constructing, or who have already constructed, or who may propose to construct, a line of telegraph, as provided in this Act, shall have the right of way for the same, and so much land as may be necessary to construct and maintain such line, and for this purpose may enter upon private lands along the line described in the certificate, for the purpose of examining and surveying the same; and where such lands cannot be obtained by the consent of the owner or owners, possessor or possessors, thereof, so much of the same as may be necessary for the construction of said line, may be appropriated by said person or persons, company, association, corporation, or their assigns (as the case may be), after making compensation therefor, as follows, to wit: Said person or persons, company, association, corporation, or the President or managing agent thereof, shall select one appraiser, and said owner or owners, possessor or possessors, shall select one, and the two so selected shall select a third, and the three shall appraise the lands sought to be appropriated, after having been first sworn before some officer authorized by law to administer oaths, to make a true appraisement thereof, according to the best of their knowledge and belief. If such person or persons, company, association, corporation, or its agent, shall tender to such owner or owners, possessor or possessors, the appraised value of such lands, appraised as aforesaid, he, she, or they, or the agent, officers, or employees of such company, association, or corporation, shall be entitled to proceed in the construction, or, if constructed, in the use of the line over the land so appraised, and may maintain said line over and upon said land, and at all times enter upon the same and pass over all adjoining lands, for the purpose of constructing, maintaining, and repairing said telegraph line, notwithstanding such tender may be refused; *provided*, that such tender shall always be kept good by such person or persons, company, association, corporation, or its agent; *and, provided further*, that an appeal may be taken by either party from the finding of the appraisers, to the district court of the district within which the land so appraised shall be situated, at any time within three months after such appraisement.

Failure to Keep Line in Repair to Forfeit Franchise—Quo Warranto.

1051. SEC. 7. The owner or owners of any line or lines constructed and maintained under, or availing himself, or themselves, or itself, of the provisions of this Act, shall at all times keep the same in as good condition and repair as may be practicable; and if such owner or owners shall fail to keep the same in such condition and repair, such failure shall work a forfeiture of all rights, privileges, and franchise belonging to such owner or owners, or any person having

any interest therein. Such franchise may be also declared forfeited on information in the nature of a quo warranto, in the manner provided by law.

An Act for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages.

Approved February 16, 1864, 125.

Penalty for Divulging Message.

1052. SECTION 1. If any officer, agent, operator, clerk, or employee of a telegraph company, or any other person, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same is addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof; or shall willfully alter any such message by adding thereto, or omitting therefrom, any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; *provided*, that when numerals or words of number occur in any message, the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affecting its genuineness, force, or validity.

Forged Message.

1053. SEC. 2. If any agent, operator, or employee in any telegraph office, or any other person, shall knowingly or willfully send by telegraph to any person or persons, any false or forged message, purporting to be from such telegraph office, or from any other person, or shall willfully deliver or cause to be delivered to any person, any such message, falsely purporting to have been received by telegraph; or if any person or persons shall furnish or conspire to furnish, or cause to be furnished, to any such agent, operator or employee, to be so sent by telegraph, or to be so delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud any individual, partnership, or corporation, or the public, the person or persons so offending, shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Penalty for Wrongly Using Information.

1054. SEC. 3. If any agent, operator, or employee in any telegraph office, shall in any way use or appropriate any information derived by him from any private message or messages passing through his hands, and addressed to any other person or persons, or in any other manner acquired by him, by reason of his trust as such agent, operator, or employee, or shall trade or speculate upon any such information so obtained, or in any manner turn, or attempt to turn, the same to his own account, profit or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall also be liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act.

Willful Neglect—Misdemeanor—Messages Not Favored.

1055. SEC. 4. If any agent, operator, or employee in any telegraph office,

shall unreasonably and willfully refuse or neglect to send any message received at such office for transmission, or shall unreasonably and willfully postpone the same out of its order, or shall unreasonably and willfully refuse or neglect to deliver any message received by telegraph, the person so offending shall be deemed guilty of a misdemeanor, and may be punished by fine, not to exceed five hundred dollars, or imprisonment, not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon shall have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States, or other resistance to lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

DUTY OF COMPANY—DAMAGE FOR DELAY. Actual damage must be shown. *Mackay v. W. U. Tel. Co.*, 16 Nev. 222.

Penalty for Willfully Opening Message.

1056. SEC. 5. If any person not connected with any telegraph office shall, without the authority or consent of the person or persons to whom the same may be directed, willfully and unlawfully open any sealed envelope inclosing a telegraphic message and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently represent any other person or persons, and thereby procure to be delivered to himself any telegraphic message addressed to such other person or persons, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable in treble damages to the party injured, for all loss and damages sustained by reason of such wrongful act.

Penalty for Stealing Message.

1057. SEC. 6. If any person not connected with any telegraph company shall, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently read, or attempt to read any message, or to learn the contents thereof whilst the same is being sent over any telegraph line, or shall willfully and fraudulently or clandestinely learn, or attempt to learn, the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat, or sent therefrom, or shall use, or attempt to use, or communicate to others, any information so obtained by any person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Bribery, Penalty For.

1058. SEC. 7. If any person shall, by the payment or promise of any bribe, inducement, or reward, procure, or attempt to procure, any telegraph agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof; or shall offer to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator or employee, or shall use, or attempt to use, any such information so obtained, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine, not to exceed one thousand dollars, or imprisonment, not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Penalty for Injuring Line.

1059. SEC. 8. If any person shall willfully or maliciously cut, break, or throw down any telegraph pole, or any tree, or other material used in any line of telegraph; or shall willfully or maliciously break, displace, or injure any insulator in use in any telegraph line, or shall willfully or maliciously cut, break, or remove from its insulator any wire used as a telegraph line; or shall, by the attachment of a ground wire, or by any other contrivance, willfully destroy the insulation of such telegraph line, or interrupt the transmission of the electric current through the same; or shall, in any other manner, willfully injure, molest, or destroy any property or materials appertaining to any telegraph line; or shall willfully interfere with the use of any telegraph line, or obstruct, or postpone the transmission of any message over the same; or procure, or advise any such injury, interference or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable to the telegraph company whose property is injured, in a sum equal to one hundred times the amount of actual damages sustained thereby.

Civil Suit for Damages.

1060. SEC. 9. Any person offending against the provisions of sections one, two, four, six, or seven of this Act, shall, in addition to the penalties therein prescribed, be liable to the party damaged in a civil suit, for all damages occasioned thereby.

Employees Exempt from Military and Jury Duty.

1061. SEC. 10. All operators, clerks, and persons in the employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph lines, shall be exempt from militia duty and from serving on juries, and from any fine or penalty for the neglect thereof.

Contracts Made by Telegraph.

1062. SEC. 11. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph, and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

Actual Notice by Telegraph.

1063. SEC. 12. Whenever any notice, information, or intelligence, written or otherwise, is required to be given, the same may be given by telegraph; *provided*, that the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

Legal Instruments May Be Sent by Telegraph.

1064. SEC. 13. Any power of attorney, or other instrument in writing duly proved or acknowledged, and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and the telegraphic copy, or duplicate thereof, shall, *prima facie*, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

Bills, Notes, etc., by Telegraph.

1065. SEC. 14. Checks, due bills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and, when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser, or acceptor, thereof, and shall create the same rights and equities in favor of the payee, drawer, indorsee, acceptor, holder, or bearer thereof; and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person, other than the person or drawer thereof, to

cause any such instrument to be sent by telegraph, so as to charge any person thereby. Except as hereinafter in the next section otherwise provided, whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall, in all cases, be preserved in the telegraph office from which the same is sent.

Proof as to Genuineness.

1066. SEC. 15. Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a Notary Public, Commissioner of Deeds, or Clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph, and the telegraphic copy thereof shall, *prima facie*, only have the same force, effect, and validity, in all respects whatsoever, as the original, and the burden of proof shall rest with the party denying the genuineness or due execution of the original.

Warrant and Orders of Arrest—Proviso.

1067. SEC. 16. Whenever any person or persons shall have been indicted or accused, on oath, of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any Judge of the supreme court, or of any district, county or probate court, may indorse thereon an order signed by him, and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any Marshal, Sheriff, Constable, or policeman; and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority, and be under the same obligation to arrest, take into custody, and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof duly indorsed thereon, had been placed in his hands, and the said telegraphic copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original. But prior to indictment and conviction no such order shall be made by any officer, unless, in his judgment, there is probable cause to believe the said accused person or persons guilty of the offense charged; *provided*, the making of such order by any officer aforesaid shall be *prima facie* evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent; and in telegraphing the same, the original or the said certified copy may be used.

Service of Writ or Papers Sent by Telegraph.

1068. SEC. 17. Any writ or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place; and the telegraphic copy of such writ, or order, or paper, so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect, in all respects, as the original thereof might be, if delivered to him; and the officer or person serving or executing the same shall have the same authority, and be subject to the same liabilities, as if the said copy were the original. The original, when a writ, or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it either the original or certified copy may be used by the operator for that purpose.

Seal or Stamp.

1069. SEC. 18. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the

same, to telegraph a description of the seal, or any words or device thereon; but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal"; and wherever any such document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy by the word "stamp," without any other or further description thereof.

"L. S." or "seal" not necessary, Sec. 2735.

Penalty for Using Private Mark of Telegraph Company.

1070. SEC. 19. The President or Secretary of any telegraph company doing business in this state, may file in the office of the County Clerk of the county in which the principal office of said company, within this state, is situated, a copy of any printed blank or envelope, picture, or device, used, or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company, as a distinguishing mark, notice or index of said business, and thereupon such blank, envelope, picture, or device, shall become the property of said company; and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed, or used, either of them, or any copy, counterfeit, similitude, or imitation thereof. Any person willfully offending against the provisions of this section may be punished by fine, not to exceed five hundred dollars, or imprisonment, not to exceed six months.

Dispatches Sent-as Received.

1071. SEC. 20. It shall be the duty of any telegraph company doing business in this state to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose dispatch is postponed out of its order; *provided*, that communications to and from public officers on official business may have precedence over all other communications; *and, provided, also*, that intelligence of general and public interest may be transmitted for publication out of its order.

Meaning of Terms "Copy," etc.

1072. SEC. 21. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this Act, shall be construed to mean any copy of a message made or prepared for delivery at the office to which said message may have been sent by telegraph.

California State Telegraph Company, etc.—Rights, etc.

1073. SEC. 22. The California State Telegraph Company, a company formed within the State of California, and having its principal office in the city of San Francisco, and doing business within the State of Nevada, is hereby declared to be duly incorporated under its present corporate name, style, and organization, and the right is hereby granted to said company to acquire, own, and enjoy, and to dispose of any and all such property, real and personal, franchises and privileges, as may be proper or convenient for the transaction of its business, and for effectually carrying out the objects and purposes of said company, as fully and completely as if said company had been originally formed and duly incorporated under the laws of this state, hereby conferring upon said company as ample power to do and transact business, and maintain its rights in all courts and places, as is or may be possessed by domestic corporations or natural persons.

Privileges in Nevada.

1074. SEC. 23. There is hereby granted to the California Telegraph Company the privilege of constructing and putting in operation lines of telegraph over any public lands, and along or across any streets, roads, highways, or streams within the State of Nevada; *provided*, that the same be not unnecessarily obstructed thereby.

Repeal.

1075. SEC. 24. An Act for the regulation of the telegraph, and to secure secrecy and fidelity in the transmission of telegraphic messages, approved November twenty-fifth, eighteen hundred and sixty-one [p. 46], is hereby repealed.

An Act to define the rights and responsibilities of owners of telephone lines in the State of Nevada.

Approved March 1, 1897, 28.

Rights of Owners.

1076. SECTION 1. All persons or corporations owning telephone lines now in operation, or who may hereafter construct and operate such lines in the State of Nevada, shall be entitled to all the rights and privileges and be subject to all the restrictions and responsibilities provided for in an Act entitled "An Act to provide for constructing and maintaining telegraph lines in the State of Nevada," approved February 9, 1866.

Sec. 1045, et seq.

Penalty for Damage.

1077. SEC. 2. Any person who shall willfully or maliciously damage or destroy any telephone line, or in any manner interrupt communication over any telephone line, shall be liable for damages and criminal prosecution in the same manner and to the same extent as if the same were a telegraph line.

REVENUE, TAXES AND LICENSES.

An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto.

Approved March 23, 1891. 135.

LEVY OF TAXES.

SECTION 1 amended, Stats. 1893, 43, and superseded by Stats. 1899, 17, Sec. 1233.

County Tax Fixed, How.

1078. SEC. 2. The Board of County Commissioners of each county shall, on or before the first Monday of March, of each year, fix the rate of county taxes for such year, designating the number of cents on each hundred dollars of property levied for each fund; and shall levy the state and county taxes upon the taxable property of the county.

See Sec. 1234.

1. STATE TAX NEED NOT BE LEVIED BY COUNTY COMMISSIONERS. The levy of state taxes by the Board of County Commissioners, though provided for in the revenue law, is an idle ceremony, for the reason that the levy is made by the legislature. *State v. Manhattan S. M. Co.*, 4 Nev. 318.
2. COUNTY TAXES MUST BE LEVIED BY COUNTY COMMISSIONERS. The amount of taxes for county purposes must be fixed and levied by the Board of County Commissioners; and without their action no county tax can be collected. *Id.*

All Levies a Lien on Real Property.

1079. SEC. 3. Every tax levied, under the provisions or authority of this Act, is hereby made a lien against the property assessed, and a lien shall attach upon the real property for the tax levied upon the personal property, of the owner of such real estate, which lien shall attach upon the day on which the

taxes are levied in each year, on all property then in this state, and on all other property whenever it reaches the state, and shall not be satisfied or removed until all the taxes are paid, or the property has absolutely vested in the purchaser under a sale for taxes.

Special Tax a Lien.

1080. SEC. 4. All special taxes levied for city, town, school, road or other purposes throughout the different counties of this state, shall be a lien on the property so assessed, and shall be assessed and collected by the same officers, at the same time, and in the same manner as the state and county taxes are now or may hereafter be assessed and collected.

PROPERTY LIABLE TO TAXATION.

Property Exempt and Exceptions.

1081. SEC. 5. All property of every kind and nature whatsoever, within this state, shall be subject to taxation except:

First—All lands and other property owned by the state, or by the United States, or by any county, municipal corporation, town or village in this state, and all public school houses, with lots appurtenant thereto, owned by any legally created school district within the state; *provided*, that when any of the property mentioned in this subdivision is used for any other than public purposes, and a rent or valuable consideration is received for its use, the same shall be taxed.

Second—Mines and mining claims; *provided*, that nothing in this section shall be so construed as to exempt from taxation possessory claims to the public lands of the United States, or of this state, or the proceeds of the mines; *and provided*, further, that nothing herein shall be so construed as to interfere with the primary title to the lands belonging to the United States.

Third—Churches, chapels and other buildings used for religious worship, with their furniture and equipments, and the lots of ground on which they stand, used therewith and necessary thereto; *provided*, that the amount so exempt shall in no case exceed the sum of five thousand dollars for any one church, chapel or other building used exclusively for religious worship; *and provided*, further, that when any such property is used for any other than church purposes, and a rent or other valuable consideration is received for its use, the same shall be taxed.

Fourth—The funds, furniture, and paraphernalia and regalia owned by any lodge of the Order of Free and Accepted Masons, or of the Independent Order of Odd Fellows, or of any other similar charitable organization, or by any benevolent or charitable society, so long as the same shall be used exclusively for the legitimate purposes of such lodge or society, or for such charitable or benevolent purposes; *provided*, that such exemption shall in no case exceed the sum of five thousand dollars to any one lodge, society or organization.

Fifth—All cemeteries and graveyards set apart and used for and open to the public for the burial of the dead, when no charge is made for burial therein.

Sixth—The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family; *provided*, that no such exemption shall be allowed to any but actual *bona fide* residents of this state, and shall be allowed in but one county in this state to the same family, and the party or parties claiming such exemption, or some one in their behalf, shall make an affidavit before the County Assessor of such residence, and that such exemption has been claimed in no other county in this state for that year.

1. PROPERTY SUBJECT TO TAX. All tangible property within the State of Nevada is subject to one and only one annual tax. State v. Earl, 1 Nev. 394.

See H. & N. G. & S. M. Co. v. Storey Co., 1 Nev. 104; People v. Taylor, 1 Nev. 109.

2. MORTGAGE TAX—CHOSE IN ACTION. A tax on money at interest, secured by mortgage on land, is neither a tax on the pieces of money loaned, the land on which the mortgage security is taken, nor upon the paper upon which the promise to pay is written. But it is a tax on the chose in action, or right to collect the debt. State v. Earl, 1 Nev. 394.

3. **CHOSE IN ACTION BELONGING TO NON-RESIDENT NOT TAXABLE.** Chose in action follows the person of those having the right. When the holder of such right resides out of the State of Nevada, this state has no jurisdiction over the person nor over the thing proposed to be taxed, and cannot tax either. *Id.*
See *Bowman v. Boyd*, 21 Nev. 281.
 4. **NATIONAL BANKS—TAXATION.** National banks are only subject to taxation upon the shares of stock owned by the shareholders therein, and upon their real estate. Mortgages held by such banks are not subject to taxation. *Bank v. Kreig*, 21 Nev. 404.
 5. **DEBTS SECURED BY MORTGAGE TAXABLE.** A debt secured by mortgage is subject to taxation, although the mortgagee is indebted to an amount equal or exceeding the amount of his mortgage. *Drexler v. Tyrrell*, 15 Nev. 114; *State v. Carson Savings Bank*, 17 Nev. 146.
 6. **NOTES AND COUNTY WARRANTS** are property subject to taxation. *State v. Bank of Nevada*, 4 Nev. 348.
 7. **POSSESSORY RIGHTS TO PUBLIC LANDS ARE SUBJECT TO TAXATION.** *Wright v. Cradlebaugh*, 3 Nev. 341; *State v. C. P. R. R. Co.*, 21 Nev. 94; *State v. C. P. R. R. Co.*, 21 Nev. 247.
 8. **PROPERTY IN TRANSITU THROUGH A COUNTY NOT PROPERLY IN IT FOR TAXATION PURPOSES.** Where wood cut in California and belonging to a citizen of that state was thrown into the Carson river and simply passed through Douglas county to find a market in Ormsby county, for which it was destined: *Held*, that in so passing through Douglas county it was not properly in it for the purposes of taxation. *Conley v. Chedic*, 7 Nev. 336.
- WHAT PERSONAL "PROPERTY IN COUNTY" IS PROPERLY ASSESSABLE THEREIN.** To constitute goods properly in a particular county, so as to make it legally assessable therein within the meaning of the revenue laws, it must be in such a situation as to make it a part of the wealth of that county; it must belong in it and be incorporated with the other property of the county. *Id.* *Robinson v. Longley*, 18 Nev. 71.
9. **NATIONAL BANK NOTES, ETC., NOT TAXABLE BY STATES.** The notes, bills, bonds, etc., of the national banks are the commodity in which those banks deal in the ordinary course of their business. State taxes upon them are state taxes upon the business of the banks, and such taxes the state cannot impose. *State v. Bank of Nevada*, 4 Nev. 348.
 10. **TAXATION—UNSURVEYED PUBLIC LANDS.** Unsurveyed public lands acquired by the appellant under the Acts of Congress of July 1, 1862, and July 2, 1864, are exempted from taxation by the state. *State v. C. P. R. R. Co.*, 21 Nev. 94.
- DESCRIPTION OF UNSURVEYED LANDS.** A description of unsurveyed lands as certain odd numbered sections "as their designation will appear when the surveys of the government are extended over them" is insufficient for their identification for taxation and is not such a description as is required by the revenue laws of Nevada. This principle applies equally when it is only the possessory claim to the land that is assessed. *Id.*
See *State v. C. P. R. R. Co.*, 21 Nev. 260.

DEFINITIONS.

"Real Estate," "Personal Property" and "Full Cash Value" Defined.

1082. SEC. 6. The term "real estate," when used in this Act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include all houses, buildings, fences, ditches, structures, erections, railroads, toll roads and bridges, or other improvements, built or erected upon any land, whether such land be private property, or property of the state or of the United States or of any municipal or other corporation, or of any county, city or town in this state, the ownership of, or claim to, or possession of, or right of possession to any lands within the state, and the claim by or the possession of any person, firm or corporation, association or company to any land, and the same shall be listed under the head of "Real Estate."

The term "personal property," whenever used in this Act, shall be deemed and taken to mean, and it is hereby declared to mean and include all household and kitchen furniture, all law, medical and miscellaneous libraries, all goods, wares and merchandise, all chattels of every kind and description, all money on hand or on deposit in bank or banks, or with individuals, all moneys at interest, secured by mortgage or otherwise, gold dust, gold and silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount exceeds the same

character of indebtedness of the party assessed, stocks of goods on hand, horses, mules, oxen, calves, beef cattle, hogs, sheep, goats, jacks and jennies, and cattle of every description, wagons, carriages, buggies, omnibuses, stages, stage coaches, sulkies, carts, drays, and all other vehicles, whether for use, pleasure or hire; also, all locomotives, cars, rolling stock and other personal property used in operating any railroad within the state; all machines and machinery, all works and improvements, all steamers, vessels and watercraft of every kind and name navigating or used upon the waters of any river or lake within this state, or having a general depot or terminus within this state; all capital loaned, invested or employed in trade, commerce or business whatsoever; the capital stock of all corporations (except the capital stock of corporations organized for mining purposes), companies, associations, ferries, or individuals doing business or having an office within this state; the money, property, and effects of every kind, except real estate, of all banks, banking institutions or firms, bankers, money lenders and brokers, and all property of whatever kind or nature not included in the term "real estate," as said term is defined in this Act; *provided*, that gold and silver-bearing ores, quartz or minerals, from which gold or silver is extracted, when in the hands of the producers thereof, shall not mean, nor be taken to mean, nor be listed and assessed, under the term "personal property," as used in this section of this Act, but are specially excepted therefrom, and shall be listed, assessed and taxed, as provided by law.

The term "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.

ASSESSMENT OF PROPERTY.

County Commissioners to Furnish Books.

1083. SEC. 7. The Board of County Commissioners of each county shall, prior to the first Monday of March of each year, cause to be prepared, suitable and well-bound books for the use of the Assessor, in which the County Assessor shall enter his tax list and assessment roll, as hereinafter provided; and in which list and assessment roll shall be assessed and included all taxes levied by authority of law for county purposes. Said book shall contain suitable printed heads, and be ruled to conform with the form of the assessment roll, as provided by this Act. All property must be assessed at its full cash value.

Assessment by Assessor—Penalties for Neglect or Refusal to Make Statement—Unknown Owners, How Rated.

1084. SEC. 8. Between the date of the levy of taxes and the first Monday of September in each year, the County Assessor, except when otherwise required by special enactment, shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms, owning the same; and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, association, or company, owing [owning] it. For the purpose of enabling the Assessor to make such assessments, he shall demand from each person and firm, and from the President, Cashier, Treasurer, or managing agent of each corporation, association, or company, including all banking institutions, associations, or firms within his county, a statement under oath or affirmation of all the real estate or personal property within the county, owned or claimed by such persons, firm, corporation, association, or company. If any person, officer, or agent shall neglect, or refuse, on demand of the Assessor or his deputy to give, under oath or affirmation, the statement required by this section, or shall give a false name, or shall refuse to give his or her name, or shall refuse to swear or affirm, he or she shall be guilty of a misdemeanor, and shall be arrested upon complaint of the Assessor, or his deputy, and upon conviction before a Justice of the Peace of the county, he or she shall be punished by a fine of not less than ten dollars nor more than five hundred

dollars, or by imprisonment in the county jail for a term not less than ten days nor more than three months, or by both such fine and imprisonment, at the discretion of the court. If the owners of any property not listed by another person shall be absent or unknown, or fail to make the statement under oath or affirmation, as herein provided, within five days after demand is made therefor, the Assessor shall make an estimate of the value of such property and assess the same accordingly. If the name of such absent owner is known to the Assessor the property shall be assessed in his or her name; if unknown to the Assessor the property shall be assessed to unknown owners. It is hereby made the duty of the Assessor, at the end of each month to report to the District or Prosecuting Attorney of the county the names of all persons neglecting or refusing to give the statement as required by this section of this Act, and it is hereby made the duty of such District or Prosecuting Attorney to prosecute all persons so offending. *As amended, Stats. 1893, 44.*

1. **ASSESSORS MUST RECEIVE SWORN STATEMENTS, BUT ARE NOT BOUND BY THEM.** Sworn statement should be received by Assessor without dictation as to what value should be inserted, but, if he thinks it too low, it is his duty to raise it. *State v. Wright, 4 Nev. 51; State v. W. U. Tel. Co., 4 Nev. 338.*

2. **FRAUD IN ASSESSMENTS.** As the law requires an honest and just estimate of value to be placed upon property for the purposes of taxation, an excessive valuation made by an Assessor contrary to his official judgment and with intent to injure, is a fraud against which the law will afford relief. *State v. C. P. R. Co., 7 Nev. 88.*

FAILURE TO FURNISH STATEMENT—EXORBITANT VALUATION. The fact that a taxpayer fails to make a statement as required by law, does not authorize the Assessor to impose a valuation which he knows to be exorbitant and unjust. *Id.*

3. **VALUE OF ASSESSABLE PROPERTY, HOW ASCERTAINED.** In the absence of any statute upon the subject, the Assessor, in specifying the value of assessable property, must be guided by those general principles which everywhere determine the valuation of property independent of any statutory rules. *State v. C. P. R. Co., 10 Nev. 47.*

4. **ASSESSORS MUST EXERCISE THEIR OWN JUDGMENT, WHEN.** Where property is visible and open to inspection, the Assessor should exercise his own judgment in the valuation, and not be governed by the opinion of the taxpayer. *Id.*

See *State v. C. P. R. Co., 21 Nev. 75.*

5. **ASSESSMENT, WHEN VALID.** The statute does not require a separate assessment or valuation of lands and improvements where both belong to the same owner; nor does it require the value per acre to be given. Where the land is described by its common designation or name, it is not necessary to also give the metes and bounds. *State v. C. P. R. Co., 10 Nev. 47.*

6. **ASSESSMENT—SEPARATE AND DISTINCT PARCELS OF LAND.** Separate and distinct parcels of land must be valued and assessed separately, or the assessment will be void. *Peers v. Reed, 23 Nev. 404.*

See *Wright v. Cradlebaugh, 3 Nev. 341; State v. C. P. R. Co., 10 Nev. 47.*

7. **ASSESSMENT FOR TAXES—NAME OF OWNER.** A slight error in the name of the taxpayer made by the Assessor, when the property is correctly described and the owner is not misled by the name, will not avoid the owner's liability for the taxes, provided he can be identified by competent testimony. *State v. D. V. Stock and Land Co., 21 Nev. 88.*

DUTY OF TAXPAYER. It is the duty of a taxpayer to call the attention of the Assessor to any error or mistake appearing upon the face of the statement, which he observes, and if he fails to do so, he will not be permitted to take advantage of his own wrong. *Id.*

EXCESSIVE VALUATION. If a taxpayer, or his agent, fails or refuses to swear to the statement made by the Assessor of his taxable property, or to give to the Assessor his list of taxable property under oath, the Board of Equalization is prohibited by law from reducing the Assessor's valuation and the taxpayer cannot question such valuation in a court of law. *Id.*

8. **TAXES—SITUS OF CATTLE.** *Held*, that the *situs* of cattle for the purposes of taxation is not controlled by the mere residence of the owner. *Barnes v. Woodbury, 17 Nev. 383.*

9. **HOME RANCH.** *Held*, that the *situs* of cattle, for the purpose of taxation, was at the home ranch, where they belonged. *Id.*

10. **ASSESSMENT—SITUS OF TAXABLE PROPERTY.** Where cattle are bred, born, branded and raised in a certain county, their habitat is in such county, and they are assessable there, notwithstanding some of them occasionally wander into other counties, or are driven temporarily into other counties, and also notwithstanding the home ranch of their owner is situate in another county and they are managed and controlled from such home ranch. *State v. Shaw*, 21 Nev. 222.
11. **ASSESSOR'S DUTY—EXCESSIVE ASSESSMENT—PROPER REMEDY.** It is the duty of the Assessor to assess all property at its true cash value, but if he errs in this respect the taxpayer's proper remedy is that designated by law, and he cannot avoid payment of his taxes on the ground that his property was valued at a higher rate than that of other persons similarly situated. *State v. Sadler*, 21 Nev. 13.
12. **ASSESSMENT OF PERSONAL PROPERTY—ACTS OF ASSESSOR.** In assessing property not taxable the Assessor acts ministerially and not judicially, and is personally liable. *Ford v. McGregor*, 20 Nev. 448.
13. **REMEDY FOR EXCESSIVE VALUATION OF ASSESSOR.** If an owner is dissatisfied with the valuation placed upon property, by the Assessor, his remedy is by an application for reduction to the Board of Equalization. *State v. Wright*, 4 Nev. 251.
14. **WHEN OBLIGATION OF TAXPAYER BECOMES FIXED.** When an assessment for taxes is made, and the Board of Equalization has acted thereon, an obligation immediately arises to pay the state the amount of taxes fixed; and it is idle to inquire into irregularities in the conduct of officers after the liability of the taxpayer is thus determined. *State v. W. U. Tel. Co.*, 4 Nev. 338.

Assessor Liable for Taxes, When—Duties of Auditor—Duties of District Attorney—Neglect of Assessor, How Excused—Double Taxes Levied, When.

1085. SEC. 9. The Assessor and his sureties shall be, and they are hereby made liable for the taxes on all taxable property within the county, which is not assessed through the Assessor's willful or inexcusable neglect; and proof of the non-assessment of any taxable property within the county, shall be prima facie evidence of such neglect. It shall be the duty of the County Auditor and County Treasurer to inform the District Attorney of the county of the nature and value of all property not assessed, naming the owner or owners thereof, whenever they, or either of them, shall know or have good reason to believe any property within the county has not been assessed according to law.

It shall be the duty of the District Attorney of the several counties of this state, on the first Monday of January of each year, to report in writing to the Board of County Commissioners of his county, a list of all taxable property, real and personal in the county, unassessed, at which time the Assessor of such county may appear, and by testimony under oath or other sworn proof, explain to the board the reason of such non-assessment. If, after hearing such proofs, the said board shall be satisfied that such non-assessment was excusable in the Assessor, it shall cause an order to that effect to be entered upon the minutes, and if the said board shall be satisfied that any non-assessment was not excusable, then said board shall cause an order to that effect to be entered on its minutes, when it shall be the duty of the District Attorney of such county to demand of the Assessor thereof all the state and county taxes due and payable upon such property for the preceding year, and if the same shall not be paid by such Assessor within ten days from such demand, then said District Attorney shall forthwith commence an action in a court of competent jurisdiction against such Assessor and his sureties, for the collection, in one suit, of all sums payable by such Assessor as aforesaid; *provided, however*, if it can be proven that any non-assessment was caused by the refusal of the owner, agent or claimant of such property, or of the person or persons having it in possession or under his control or charge, to give a list of it to the Assessor, the Assessor shall not be liable; but the person or persons whose refusal to give the Assessor such list (and whose duty it was under the law to give such list) caused the omission, shall pay double the amount of the taxes that would have been imposed upon the property had it been assessed.

Lists Under Oath Shall Describe Property.

1086. SEC. 10. At the same time and in the same manner as other lists of property, herein required, are given, each and every person shall deliver, under oath or affirmation, to the Assessor, a similar list of all real estate, with the improvements thereon, and all personal property which he, and the firm of which he is a member, and the corporation of which he is President, Cashier, Treasurer, Secretary, Trustee or managing agent, owns, claims or has the charge, possession or control of, in any other county of the state, which he does not, of his own personal knowledge, know has been assessed in such other county for that year, which list shall particularly describe each tract of land and each city or town lot contained therein (so that the same may be found or known by such description), and all vessels, steamers and other water craft, and shall also specify each and all deposits, if any, and persons with whom such deposit or deposits are made, and the places in which the same may be found, unless he shall have included all such money, gold dust, gold and silver bars and bullion in the list of property in his county, which it shall be lawful to do; and shall also specify the kind and nature of all other personal property in such county belonging to or under the charge, control or in the possession of him or them.

Property in Other Counties.

1087. SEC. 11. Every Assessor, as soon as he shall have received a list of any property in another county, under the foregoing section, shall make out from the list delivered to him a list for each county in which any such taxable property may be, and shall transmit the same, by mail or express, to the Assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assessed for the same year.

Property Assessed in Several Counties.

1088. SEC. 12. When real property is assessed by the County Assessors of two counties on territory claimed by both, the owner of the real estate assessed is hereby authorized to pay said taxes in either county that he may select, and in case of suit being brought for the non-payment of said taxes in the county in which said suit may be brought, the production of a tax receipt for the current year on said property, signed by the proper officer, although in an adjoining county claiming jurisdiction, of a date prior to the commencement of said action, shall entitle said taxpayer to a dismissal of said suit, free of cost.

ABOVE SECTION CONSTRUED. Humboldt Co. v. Lander Co., 24 Nev.

Property of Partnership and Incorporations—Estates of Deceased Persons, How Assessed.

1089. SEC. 13. The owner or holder of any stock, in any firm, incorporated company or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed, shall not be assessed individually for his stock in such company or association, nor shall any person having an interest in any partnership or firm be individually assessed for the partnership or firm property, if such property is assessed to the partnership or firm. The property of every firm, incorporated company or association shall be taxed in the county where the property is situated; *provided*, that whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then, upon presentation at the principal office of such company, of the certificate or receipt of the collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon, or paid by said company, for the same property, in the county wherein the principal office of said company is situated.

The undivided property of deceased and insane persons may be listed to the heirs, guardians, executors or administrators, as the case may be, and a payment of taxes made by either, shall bind all the parties in interest for their equal proportions. It is hereby made the duty of every District Judge, from time to time,

to direct each and every administrator, executor and guardian (which direction may be especially given in each case or by general order) to pay, out of the funds of the estate, all taxes that have attached or accrued against such estate after the passage of this Act; and no order or decree, for the distribution of any property of any decedent among the heirs or devisees, shall be made until the taxes which have been attached to or accrued against the estate shall have been paid.

Falsely Listing Property, Perjury.

1090. SEC. 14. If any person shall willfully make or give, under oath or affirmation, a false list of his, her or their taxable property, under his or her control, such person shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished therefor as is by law provided for the punishment of perjury.

Mortgaged Personal Property.

1091. SEC. 15. When personal property is mortgaged or pledged it shall, for the purpose of taxation, be deemed the property of the person who has the possession thereof.

Assessors to Prepare List—Cost of Printing.

1092. SEC. 16. It shall be the duty of the Assessor in each of the respective counties of the state on or before the second Monday in September in each year to prepare a printed list of all the taxpayers in the county and the total valuation of property on which they severally pay taxes. A copy of said list shall be by the said Assessor delivered in person or mailed to each and every taxpayer in the county; *provided*, that the cost of printing the aforesaid list shall not exceed twenty cents for each name for as many copies as there are names on the list. The several Boards of County Commissioners in the state are authorized and empowered to allow the bill contracted by the Assessor under this section, and the several County Auditors are authorized to draw their warrants in payment for the same. *As amended, Stats. 1893, 44.*

Assessment Roll—Property Described and Listed.

1093. SEC. 17. It shall be the duty of the Assessor to prepare a tax list, or assessment roll, indexed or alphabetically arranged, in the book or books furnished by the Board of County Commissioners for that purpose, in which book or books shall be listed all the real estate, improvements on real estate, including improvements on public lands and other personal property within the limits of the county, and in said book or books there shall be set down in separate columns:

First—The names of the taxable inhabitants, firms, incorporated companies, or associations, in alphabetical order, if known; if unknown, the property shall be assessed to unknown owners, and if any person shall refuse to make a statement of his property under oath, as required by this Act, that fact shall be noted under his name.

Second—All real estate, including the ownership or claims to, or possession of, or right of possession to any land and improvements, taxable to each inhabitant, firm, incorporated company, or association, described by metes and bounds, or by common designation or name, if situated within the limits of any city or incorporated town, described by lots or fraction of lots; if without said limits, giving the number of acres, as near as can be conveniently ascertained, and the location and township where situated; all improvements on public lands, describing as nearly as possible the location of said improvements; *provided*, that when two or more parties claim, by description, the same land, it shall be assessed to each party making such claim or giving such description, according to the estimated value of the claims of each.

Third—The cash value of real estate, including the possessory claim to lands and the improvements thereon.

Fourth—The cash value of all improvements on real estate, including possessory

claims, where the same is assessed to a person other than the owner of said real estate.

Fifth—The cash value of all personal property except improvements on real estate or on public lands, taxable to each and exclusive of money and solvent debts.

Sixth—Amount of money and solvent debts.

Seventh—The total value of all property taxable to each. And no further description of personal property than that required by the foregoing provisions of this section shall be needed or requisite to render the assessment binding and effective. The form of the assessment roll shall be substantially as follows:

When tax paid -----	Real estate. Number of acres-----
Taxpayer's name -----	Section -----
Description of property-----	Number of lot -----
	Number of block-----

	DOLLARS.	CTS.
Value of real estate or possessory claim and improvements,	-----	---
Value of improvements or real estate or possessory claims assessed to persons other than the owners of said real estate or possessory claims,	-----	---
Value of personal property,	-----	---
Amount of money and solvent debts,	-----	---
Total value,	-----	---
State proportion,	-----	---
County proportion,	-----	---
Special tax (naming it),	-----	---
Poll tax,	-----	---
Total tax,	-----	---
To whom paid -----	-----	---

As amended, Stats. 1893, 45.

Assessor to Prepare Map.

1094. SEC. 18. The Assessor shall also, when directed by the Board of County Commissioners, in a book, make a map or plan of the various blocks within any incorporated city or town, and shall mark thereon the various subdivisions, as they are assessed; and in such subdivision he shall mark the names of persons to whom it is assessed.

Completion of Assessment Roll—Oath of Assessor.

1095. SEC. 19. On or before the second Monday of September in each year the Assessor shall complete his tax list or assessment roll, and he or his deputy, as the case may be, shall take and subscribe to an affidavit written therein to the effect that he has made diligent inquiry and examination to ascertain all the property within the county subject to taxation, and that he has assessed it on the assessment roll equally and uniformly, according to the best of his judgment, information and belief, at its full cash value; but the failure to take or subscribe to such affidavit shall not in any manner affect the validity of any assessment contained in said assessment roll. *As amended, Stats. 1893, 46.*

- 1. WHEN ASSESSMENT ROLL TO BE MADE.** The time prescribed by the revenue law within which the Assessor is to complete his assessment roll, is only for the convenience of other officers; if the Assessor is dilatory, he may render himself liable on his bond, but his dilatoriness furnishes no matter of which a taxpayer can complain, or on account of which he can defeat the tax. *State v. W. U. Tel. Co., 4 Nev. 338.*
- 2. CERTIFICATE OF ASSESSOR TO ASSESSMENT ROLL.** There is no particular form required for the certificate of the assessment roll, nor does it have to be a sworn certificate. *Id.*

3. **ASSESSMENT ROLL NOT TO BE ALTERED.** The Assessor has no authority to alter the assessment roll after it has passed out of his hands, not even to correct a mistake. *State v. Manhattan S. M. Co.*, 4 Nev. 318.
4. **ASSESSMENT ROLL—DUTY OF ASSESSOR—PRESUMPTION.** Under the provisions of sections 17 and 19, it is the duty of the Assessor, on or before the first Monday of September of each year, to complete the assessment roll, which must contain a list of all the property in the county, real and personal, subject to taxation. In the absence of a showing to the contrary, it will be presumed that the Assessor obeyed the law, in this respect, and that the property in question was properly listed upon the assessment roll. *State v. Meyers*, 23 Nev. 274.
5. **ASSESSMENT ROLL—TIME FOR COMPLETING IT DIRECTORY—DEFENSE WHEN TAXPAYER HAS BEEN INJURED.** The provisions of the statute, as to the time for completing the assessment roll is merely directory, and any irregularity in that respect is a defense in an action for the taxes only to the extent that the taxpayer, has been injured thereby. *State v. Northern Belle M. & M. Co.*, 15 Nev. 385.

Notice of Meeting of Board of Equalization.

1096. SEC. 20. As soon as completed, the assessment roll, together with the map book, and all statements made by taxpayers, shall be delivered to the Clerk of the Board of County Commissioners, who shall immediately give notice thereof, and of the time the Board of Equalization will meet to equalize assessments, by publication in one newspaper, if any be printed in the county, and if none, then in such manner as the Board of County Commissioners shall direct; and in the meantime the assessment roll shall remain in the office of said Clerk for public inspection.

NOTICE OF ASSESSMENT ROLL. If a party appear before the board, he cannot complain of the want of notice, or that no notice was given as required by law. *State v. W. U. Tel. Co.*, 4 Nev. 338.

Basis of Taxation.

1097. SEC. 21. The assessment made by the County Assessors, as apportioned by the Boards of County Commissioners, shall be the only basis of taxation for city, town, school, road, or other districts, in their respective counties. *As amended, Stats. 1893, 47.*

SEC. 22 repealed. *Stats. 1893, 47.*

COUNTY BOARDS OF EQUALIZATION.

Powers and Duties—Rights of Taxpayer When Valuation Has Been Added.

1098. SEC. 23. The Board of County Commissioners of each county shall constitute a Board of Equalization, of which board the Clerk of the Board of County Commissioners shall be Clerk. The Board of Equalization of each county shall meet on the third Monday in September in each year, and shall continue in session from time to time until the business of equalization presented to them is disposed of; *provided, however*, that they shall not sit after the first Monday of October, except as in this section provided. The board shall have power to determine the valuation of any property assessed, and may change and correct any valuation, either by adding thereto or deducting therefrom, such sum as shall be necessary to make it conform to the actual cash value of the property assessed, whether said valuation was fixed by the owner or Assessor; except that in case where the person complaining of the assessment has refused to give the Assessor his list under oath, as required by this Act, no reduction shall be made by the board in the assessment made by the Assessor. If the board find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct the Clerk to give notice to the person so interested, by letter deposited in the postoffice or express, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. As soon as possible after the adjournment of the board in September its clerks shall make out a list of all persons who have not appeared before the board, the valuation of

whose property has been added to on the assessment roll, and shall state the amount so added, and list of all property, the valuation on which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board; and the Board of County Commissioners shall cause the same to be published in one newspaper in the county, if there be any, and if not, then by posting one copy of the same in a public place in each election precinct in the county, and any person, to the assessed value of whose property there was an amount added, not appearing before the Board of Equalization in September, may appear before it in October, and upon making affidavit that he had no knowledge of such increased valuation of his property, he shall be given a hearing and the final judgment of the board, and the Clerk of the Board shall note all changes made and report the same to the Auditor, who shall make the changes required on the original assessment roll. The Assessor, either in person or by deputy, shall be present, also any deputy whose testimony may be required by the parties appealing to the board, and they shall have the right to make any statement touching such assessment and to produce evidence relating to questions before the board. The Recorder of the county shall be also present and attend on the board with an abstract of all unsatisfied mortgages and liens remaining on record in his office, arranged in alphabetical order, for which service he shall receive no compensation, and the Board of Equalization shall make use of such abstract and of all other information that they can procure from the Recorder in the Recorder's office or otherwise in equalizing the assessment roll of the county, and may require the Assessor to enter upon such assessment roll any mortgage or lien or other property which has not been assessed, and the assessment and equalization so made shall have the same force and effect as if made by the Assessor before the delivery of the assessment roll by him to the Clerk of the Board of County Commissioners. On the second Monday in October the Board of County Commissioners shall meet as a Board of Equalization to equalize the assessment roll and hear complaints in the excepted cases mentioned in this section. *As amended, Stats. 1893, 47.*

See Sec. 1227.

Quorum.

1099. SEC. 24. A quorum of the Board of County Commissioners shall be sufficient to constitute the Board of Equalization, and a majority of the members present shall determine the action of the board.

SEC. 25 repealed, Stats. 1893, 48.

1. **BOARDS OF EQUALIZATION—JURISDICTION AND POWERS.** Boards of Equalization can only exercise such powers as are expressly granted, and when the law prescribes the mode which they must pursue in the exercise of those powers, it excludes all other modes of procedure. *State v. C. P. R. R. Co., 21 Nev. 270.*
2. **BOARD OF EQUALIZATION—NO JURISDICTION TO RECONSIDER.** A Board of Equalization is of special and limited jurisdiction, having only such powers as are specially conferred upon it. The statute confers upon it the power to determine all complaints concerning the assessment of property, but after the determination of such complaints its action is final and it has no power to reconsider and change its action. *State v. C. P. R. R. Co., 21 Nev. 172.*

BOARD OF EQUALIZATION—ASSESSMENT—FRAUD. In the absence of fraud, the statute makes the action of a Board of Equalization in equalizing the valuation of property final, and an allegation of fraud upon the part of the Assessor in fixing values, when it is not claimed that the Board of Equalization acted fraudulently in confirming the Assessor's valuation, is no ground for disturbing the valuation. *Id.*

3. **BOARD OF EQUALIZATION OF SPECIAL AND LIMITED JURISDICTION.** The Board of Equalization is of special and limited jurisdiction, and its record must show affirmatively the necessary jurisdictional facts. *State v. Washoe Co., 5 Nev. 317.*

EQUALIZATION—REDUCTION OF ASSESSMENTS. Under the Revenue Act of 1866 (Stats. of 1866, 168, Sec. 15) the Board of Equalization has no power to reduce an assessment when the person complaining has refused to give the Assessor a statement under oath of his property. *Id.*

4. ALL PROPERTY TO BE EQUALIZED. Under section 23 of the revenue law, which provides that the Board of Equalization "shall have power to determine the valuation of any property assessed," the Board has power and jurisdiction to equalize all property, without qualification or condition. *State v. Meyers*, 23 Nev. 274.

BOARD OF EQUALIZATION—PERSONAL PROPERTY—JURISDICTION. Under section 23 above it is not necessary that a complaint should be made to give the board jurisdiction of the subject. *Id.*

5. EQUALIZATION—COMPLAINT, HOW MADE. A complaint made by any person to the Board of Equalization, orally or in writing, that an assessment is too high or too low, and asking that it be reduced or raised, is sufficient to authorize the board to act. *State v. Northern Belle M. Co.*, 12 Nev. 89.

NOTICE TO BE GIVEN. If the complaint is of undervaluation, the board must give reasonable notice to the party assessed when it will act upon the complaint. *Id.*

6. COUNTY COMMISSIONERS CANNOT COMPROMISE TAX SUITS. The Board of County Commissioners have no power to compromise and settle suits instituted by the state for the collection of delinquent taxes. *State v. C. P. R. R. Co.*, 9 Nev. 79.

POWERS OF COUNTY COMMISSIONERS SPECIAL AND LIMITED. Boards of County Commissioners are inferior tribunals of special and limited jurisdiction, and their action must affirmatively appear to be in conformity with some provision of law giving them power or it will be without authority. *Id.*

POWER TO REDUCE TAXES. The only authority giving County Commissioners power to reduce or in any manner change taxes as assessed is vested in them as Boards of Equalization; and when acting in that capacity they must comply literally with the plain provisions of the statute. *Id.*

COUNTY COMMISSIONERS CANNOT RELEASE LIEN OF TAXES. When taxes are levied they become a lien, and when the Board of Equalization has acted an obligation immediately arises on the part of the party taxed to pay the state the amount due; and thereafter County Commissioners can neither release the property from the lien nor discharge the party from his obligation. *Id.*

7. COUNTY COMMISSIONERS HAVE NO POWER TO RELEASE PROPERTY FROM TAXATION. County Commissioners have no power to discriminate as to the character of the property which should be subject to taxation. That is a question for the legislature, subject to the provisions of the constitution. *State v. Gracey*, 11 Nev. 223.

8. JURISDICTION OF BOARD OF EQUALIZATION TO RAISE ASSESSMENT—CERTIORARI. If the Board of Equalization acts without jurisdiction in raising an assessment, that is a good defense *pro tanto* in any suit for the tax, and in such a case the writ of certiorari ought not to be issued to review the action of the board. *State v. Washoe Co.*, 14 Nev. 140.

WRITTEN COMPLAINT NOT NECESSARY. The law does not require that a written complaint shall be filed in order to authorize the Board of Equalization to raise an assessment. *Id.*

PUBLICATION OF NAMES MERELY DIRECTORY. The law requiring a list of persons, the valuation of whose property has been raised by the Board of Equalization, is merely directory. It is not a defense in a tax suit unless it has actually injured the defendant. *Id.*

9. CONTINUANCE OF SESSIONS. Boards of Equalization are not required to remain in continuous session during the time fixed by law for hearing complaints against the Assessor's valuation of property, unless there is business before them to transact. *State v. C. P. R. R. Co.*, 21 Nev. 270.

CESSEATION OF POWERS AFTER ADJOURNMENT. When a Board of Equalization meets on the day fixed by law and, there being no business before it, adjourns until a day subsequent to the last day fixed by law for hearing complaints, its powers cease for the remainder of the year, except to examine the particular cases designated by the statute. *Id.*

10. REDUCTION OF ASSESSMENT BY BOARD OF EQUALIZATION—JURISDICTIONAL FACTS MUST BE AFFIRMATIVELY SHOWN. When a railroad company claims that its taxes, as assessed by the County Assessor, have been reduced, it must affirmatively show the jurisdictional facts that a complaint was made by it to the Board of Equalization of the Assessor's valuation of the property. *State v. C. P. R. R. Co.*, 17 Nev. 259.

RECORD MUST SHOW FACTS. Record must show complaint was made. Oral testimony of members of board inadmissible. *Id.*

11. NO EQUALIZATION OF TAXES NECESSARY WHERE NO INJUSTICE COMPLAINED OF. *State v. Manhattan S. M. Co.*, 4 Nev. 318.

12. SUBSEQUENT TAX ASSESSMENT—POWERS OF BOARD REGARDING—JURISDICTION—TIME FOR EQUALIZING, ETC. *State v. Ormsby Co.*, 6 Nev. 95; *V. & T. R. R. Co. v. Ormsby Co.*, 5 Nev. 341.

13. AUDITOR'S DUTIES AND LIABILITIES AS TO ASSESSMENTS FOR TAXES. *State v. Fish*, 4 Nev. 216.

Clerk to Enter Changes.

1100. SEC. 26. During the session, or within five days after the adjournment of the Board of Equalization, its Clerk shall enter upon the assessment roll all the changes and corrections made by the board, and shall immediately deliver said corrected roll, with his certificate attached, to the County Auditor. *As amended, Stats. 1893, 48.*

DUTIES OF AUDITORS IN RELATION TO REVENUE.

Auditor to Add Up Tax Roll.

1101. SEC. 27. The County Auditor, as soon as the assessment roll is delivered to him by the Clerk of the Board of Equalization, shall proceed to add up the valuations and to enter the total valuation of each kind of property and the total valuation of all property on the assessment roll, and he shall, on or before the fourth Monday in October of each year, deliver the same to the ex officio Tax Receiver, with his certificate attached, together with the maps or plat book. *As amended, Stats. 1893, 48.*

See Sec. 1229.

SECS. 28 and 29 repealed, Stats. 1893, 48.

Auditor to Charge Tax Receiver With Amount of Taxes.

1102. SEC. 30. On delivering the assessment roll to the ex officio Tax Receiver, the Auditor shall charge him with the full amount of the taxes levied, and he shall forthwith transmit by mail to the State Controller a statement showing the assessed valuation of all property in the county and the amount of taxes levied thereon for state and county purposes.

COLLECTION OF PROPERTY TAXES.

County Treasurers to Be Tax Receivers.

1103. SEC. 31. The several County Treasurers of this state shall be ex officio Tax Receivers, under the provisions of this Act, for their several counties, and they shall receive all taxes on real and personal property and receipt for the same.

Notice to Taxpayers, How Given—Taxes Delinquent.

1104. SEC. 32. Upon receiving the assessment roll from the Auditor, the ex officio Tax Receiver shall proceed to receive the taxes, and shall forthwith give notice by publication in some newspaper published in his county, and if none be so published, then by posting notices in three public and conspicuous places in the county, that taxes will be delinquent on the first Monday in December, and that unless paid prior thereto ten per cent will be added to the amount thereof; and he shall forward by mail a postal card to each taxpayer whose residence is outside of the county seat, if the postoffice address of such taxpayer is known to him, notifying him or them of the amount due.

Duties of Tax Receiver When Tax is Paid.

1105. SEC. 33. Whenever any tax is paid to the ex officio Tax Receiver he shall mark the word "paid" and the date of payment in the assessment roll opposite the name of the person or description of the property liable for such taxes,

and shall give a receipt therefor, specifying the amount of the assessment and the amount of the tax and a description of the property assessed. But no ex officio Tax Receiver shall receive any taxes for any portion less than the least subdivision entered upon the assessment roll; *provided, always*, that an owner of undivided real estate may pay the proportion of taxes due on his interest therein.

TAXES UPON SUBDIVISIONS. The law permits and the taxpayer has a right to pay the tax on subdivisions of his property without paying the taxes upon his entire property. *State v. C. P. R. R. Co.*, 21 Nev. 94.

TENDER—DUTY OF TAX RECEIVER. It is the duty of the Tax Receiver to receive the full taxes on the least subdivisions entered on the assessment roll, when properly tendered, and to give his receipt therefor. When a public officer has been clothed by statute with power to do an act which concerns the rights of third persons, the execution of the power may be insisted on, though the phraseology of the statute be permissive merely, and not peremptory. *Id.*

Taxes Delinquent—Delinquent Tax List—Notice to Be Given.

1106. SEC. 34. On the first Monday in December the ex officio Tax Receiver, at the close of his official business on that day, shall enter upon the assessment roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which have not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the Auditor the list of all persons, and property then owing taxes, verified by the oath of himself or deputy, which shall be completed by the second Monday in December and shall be known as the delinquent list; and the Auditor shall immediately cause said list to be published in at least one newspaper in his county for not less than one nor more than four weeks, and if no newspaper be published in the county, then a copy thereof shall be posted by the Auditor in at least five conspicuous places within the county; *provided*, that the cost of publication in each case shall be charged to the delinquent taxpayer and shall, in no case, be a charge against the state or county; *and provided, further*, that such publication shall be made at not more than legal rates.

1. STATUTE REQUIRING DELINQUENT LIST DIRECTORY. The provisions of the statute for a delinquent list are merely directory; the omissions to comply with them do not avail the defendant in a tax suit. *State v. C. P. R. R. Co.*, 10 Nev. 47.

2. IMPROPERLY VERIFIED TAX ROLL—DUTY OF TAXPAYER. An objection to the introduction of the delinquent tax roll in evidence, on the ground that it is not properly verified by the County Treasurer is immaterial, when the defendant, after his objection is overruled, cured the error, if any existed, by introducing the original assessment roll, which gives the true assessment of his property. There is no necessity of proving a delinquency, as it is the duty of the taxpayer, when his assessment is once properly made, to seek the proper officer and pay his taxes. *State v. Sadler*, 21 Nev. 13.

REPETITION OF DOLLAR MARK UNNECESSARY. The dollar mark placed at the head of columns of figures is sufficient and need not be repeated before each item. *Id.*

OMISSION OF DIRECTORY REQUIREMENTS—TAXPAYER NOT RELEASED. The acts required of officers "between the assessment and commencement of suit" are directory merely, and their omission will not release the taxpayer from his obligation to the state. *Id.*

3. State v. Eureka Con. M. Co., 8 Nev. 15; *State v. Northern Belle M. Co.*, 15 Nev. 385.

Money, How and When Apportioned.

1107. SEC. 35. The County Treasurer shall, on Monday in each week, apportion all the money that shall have come into his hands, as ex officio Tax Receiver, during the preceding week into the several funds, as provided by law, and shall make out a statement, under oath, of the same, and transmit said statement to the Auditor, to be by him filed in his office.

Assessment Roll Turned Over, When and How.

1108. SEC. 36. On the second Monday in December in each year, the ex officio Tax Receiver shall attend at the office of the County Auditor with the

assessment roll, and the Auditor shall then and there administer to the ex officio Tax Receiver an oath, which shall be written and subscribed on the assessment roll, to the effect that each person and all property assessed in said roll on which taxes have been paid to him has the word "paid" marked opposite the name of such person, or the description of such property, and the Auditor shall then foot up the amount of taxes remaining unpaid, and shall make a final settlement with the ex officio Tax Receiver of all taxes charged against him on account of said assessment roll.

Delinquent List Sent to Controller.

1109. SEC. 37. Within ten days after such final settlement, the Auditor shall transmit, by mail or otherwise, to the State Controller a statement, in such form as the Controller may require, of all and each particular kind of property delinquent, and the total amount of delinquent taxes.

See Sec. 1230.

Neglect of Treasurer, Penalty—Duty of District Attorney.

1110. SEC. 38. If any Treasurer and ex officio Tax Receiver shall refuse, for a period of five days, or willfully neglect to make the settlement with, and statement to the Auditor of his county, as in this Act required, he and his sureties shall be liable to pay the full amount of taxes charged upon the assessment roll, and the District or Prosecuting Attorney, of his own volition, or on being instructed to do so by the State Controller or the Board of County Commissioners, shall cause suit to be brought against said Treasurer and ex officio Tax Receiver and his sureties for the full amount due on the Auditor's books. And if such suit is commenced, no credit or allowance whatever shall be made to such refusing or neglecting Treasurer and ex officio Tax Receiver for the taxes outstanding.

When Notice of Sale Given and What to Specify—Civil Practice Act Applicable.

1111. SEC. 39. Immediately after the second Monday in December of each year, the County Treasurer and ex officio Tax Receiver shall advertise the property, upon which delinquent taxes are a lien, for sale, in all cases where the delinquent tax, exclusive of poll taxes and penalties, does not exceed the sum of three hundred dollars, such sale to be made at the court house door of the county, on the third Monday in January next succeeding. Such notice shall be published in a newspaper, if there be one in the county, at least once a week from the date thereof until the time of sale, and if there be no newspaper in the county, such notice shall be posted in at least three public places in each township where delinquent property is situated, such posting to be at least twenty days prior to the day of sale; *provided*, that the cost of such publication shall not exceed two dollars for each or any case of delinquency. Such notice shall specify and give:

First—The name of the owner, if known.

Second—The amount of taxes due from him, together with the penalty and costs.

Third—The description of the property on which such taxes are a lien and which will be sold for the payment thereof.

Fourth—And that ten per cent on such taxes and costs of advertising will be collected in addition to the original tax, or the property sold for all of said sums, specifying the time and place of said sale, and that such sale is subject to redemption within six months after the date of sale by payment of all of said sums with three per cent per month thereon from date of sale until paid; *provided*, that such redemption may be made in accordance with the provisions of the Civil Practice Act of this state in regard to real property sold under execution, except as to percentage of redemption as in this section provided. The bidding at tax sales under the provisions of this section shall be for the smallest quantity of property that will pay the taxes, penalty and costs.

1. COLLECTION OF TAXES BY SUMMARY PROCESS. The power of taxation carries with it the right and power of collecting taxes by summary process. *Gibson v. Mason*, 5 Nev. 283.

2. DELINQUENT TAXES—SUMMARY PROCESS FOR COLLECTION. The summary process provided by statute for the sale of property for delinquent taxes amounting to less than three hundred dollars does not deprive a person of property without due process of law. *Sawyer v. Dooley*, 21 Nev. 390.

ITEM—DUE PROCESS OF LAW—CLASSIFICATION OF TAXPAYERS. Such summary proceedings do not deprive a person owing less than three hundred dollars of the equal protection of the laws; although, where the amount is more than that sum, there must be a regular action in court for its collection. This is only a reasonable exercise by the legislature of the right to classify the taxpayers. *Id.*

3. NON-PAYMENT OF TAXES—NEGLECT OF OFFICER. One taxpayer cannot be allowed to escape payment of his taxes because the collector has improperly failed to collect from another from whom taxes are due. *State v. Eastabrook*, 3 Nev. 173.

4. TAXPAYER NOT IN DEFAULT. A taxpayer is not in default until he has an opportunity to pay the taxes assessed against him. *State v. W. U. Tel. Co.*, 4 Nev. 338.

What Certificate of Sale Shall Recite—Treasurer May Buy.

1112. SEC. 40. After receiving the amount of taxes, penalty and costs, the Treasurer shall make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed, if the land is not sooner redeemed; *provided*, that if no one else shall bid upon any piece of land at such sale, the Treasurer shall bid the same in for the benefit of the county and state, and file a certificate thereof with the County Recorder; and the same shall be subject to redemption from the Treasurer the same as from a private purchaser; and if not redeemed, the title thereto shall vest in the county for the benefit of the county and state, and may be disposed of as provided by law. One of the duplicate certificates of sale issued by the Treasurer, in case of a private purchaser, shall be filed in the office of the County Recorder.

SALE OF PROPERTY FOR TAXES. Where property is sold for taxes in a summary manner, without any regular proceedings in a court of justice, it is essential that all the requirements of the law should be strictly complied with. *Ward v. Carson River W. Co.*, 13 Nev. 44.

Treasurer's Deed to Recite What—Fee.

1113. SEC. 41. If the property is not redeemed within the time allowed by law for its redemption, the Treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate of sale, and that no person has redeemed the property during the time allowed for its redemption. The Treasurer shall be allowed a fee of three dollars for making such deed, which, together with the cost of acknowledging the same, shall be paid by the purchaser; *provided*, that when the deed is made to the county as the purchaser, the Treasurer shall make the deed and the County Clerk shall take the acknowledgment without charge.

Wright v. Cradlebaugh, 3 Nev. 341; *Bolan v. Bolan*, 4 Nev. 150.

Delinquents May Pay, When and How.

1114. SEC. 42. At any time after the second Monday of December and before the institution of suit, as in this Act provided, where the amount of taxes exceeds three hundred dollars, and before the sale of property where the amount of taxes does not exceed three hundred dollars, any delinquent taxpayer, upon a certificate from the Auditor giving a description of the property and the taxes thereon, may pay to the ex officio Tax Receiver the taxes assessed against said delinquent, with ten per centum addition, by way of penalty thereon, taking from the ex officio Tax Receiver duplicate receipts for the amount paid, one of which shall be filed with the County Auditor and the other, in cases where the amount of taxes, exclusive of the penalty for delinquency and exclusive of poll tax, exceeds three

hundred dollars, shall be filed with the District or Prosecuting Attorney of the county.

District Attorney Not to Begin Suit, When.

1115. SEC. 43. After having been served by any person with the duplicate tax receipt of the ex officio Tax Receiver for the total amount of taxes due from such person or upon a piece of property, with ten per centum additional, the District or Prosecuting Attorney shall not commence the suit authorized by this Act against such person or property; *provided*, that if any person shall fail to serve said receipt, said person shall pay all costs that may result from his or her negligence.

Disposal of Penalty.

1116. SEC. 44. The additional ten per centum herein provided for shall be paid into the county treasury for the use of the county.

Duties of Auditor When Tax Exceeds Three Hundred Dollars—Notice, How Given.

1117. SEC. 45. The Auditor shall, within three days after receiving the delinquent list, make out and deliver to the District and Prosecuting Attorney of his county, a list duly certified to by him of all delinquencies, where the delinquent tax, exclusive of poll taxes and penalties, exceeds the sum of three hundred dollars, charging him therewith, and shall at the same time give notice by publication in some newspaper in the county, if there be any, and if not, then by posting notices in three public places in the county, that the said list has been deposited with the District or Prosecuting Attorney, and that unless the delinquent taxes therein specified are paid to the Treasurer, as ex officio Tax Receiver, within twenty days from the publication or posting of such notices, action will be commenced by the District or Prosecuting Attorney for the collection of said taxes and costs. The Auditor shall make, or procure and file with the District or Prosecuting Attorney, an affidavit stating the contents of said notice and the manner and time of such publication or posting as required by this section.

Additional Bonds of District Attorney.

1118. SEC. 46. The District or Prosecuting Attorney, before receiving the delinquent list, as provided in the preceding section, shall enter into such additional bonds as may be required by the Board of County Commissioners. The said delinquent list, or a copy thereof, certified by the County Auditor, and showing unpaid taxes against any person or property, shall be prima facie evidence in any court to prove the assessment, property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

Suit for Delinquent Taxes May Be Begun, When—Jurisdiction of Court.

1119. SEC. 47. The District or Prosecuting Attorneys of the several counties of this state are hereby authorized and directed, immediately after the time specified in section forty-five of this Act, to commence action in the name of the State of Nevada against the person or persons so delinquent, and against the real estate and improvements assessed so delinquent, and against all owners known or unknown, to recover such delinquent taxes in all cases where the delinquency, exclusive of poll tax and penalties, exceeds the sum of three hundred dollars. Such actions may be commenced in the county where the assessment is made, before any court in said county having jurisdiction of the amount thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes, exclusive of poll taxes and penalties sued for, without regard to the location of the lands or other property as to townships, cities or districts, and without regard to the residence of the person or persons, or owner or owners, known or unknown.

DUTY OF DISTRICT ATTORNEY. The duty of bringing suits for the collection of delinquent taxes is specially imposed upon the District Attorney. *Drake v. Hobart*, 12 Nev. 406; *State v. Cal. M. Co.*, 13 Nev. 203.

Costs and Penalties.

1120. SEC. 48. In all suits brought for the collection of delinquent taxes, as provided for in the preceding section, the complaint and summons shall demand, and the judgment shall be entered for twenty-five per centum in addition to the tax of ten per centum thereon and costs; and such tax, penalty and costs shall not be discharged, nor shall the judgment therefor be satisfied except by the payment of the tax, original penalty, costs, and the additional penalty herein prescribed in full.

1. **COUNTY COMMISSIONERS CANNOT COMPROMISE TAX SUITS.** Neither the Board of County Commissioners nor the District Attorney have any authority to make any compromise or composition with delinquent taxpayers, or to release them from the payment of their taxes. *State v. C. P. R. R. Co.*, 10 Nev. 47.

2. **A JUDGMENT FOR DELINQUENT TAXES MUST INCLUDE THE PENALTY.** In a suit for delinquent taxes and penalties, the attorneys for the state, including the District Attorney, consented to withdraw the claim for penalties from the consideration of the court, and take judgment for the amount of the tax. The judgment was so entered: *Held*, error; that it was the duty of the court to include the amount of the penalties in the judgment. *State v. Cal. M. Co.*, 15 Nev. 234.

CONSENT OF ATTORNEY AND STATE OFFICERS VOID. Neither the District Attorney, other counsel for the state, nor any of the state officers, are clothed with any authority to give consent to a judgment for delinquent taxes without including the penalties. *Id.*

RIGHT OF APPEAL. As no consent could be given to the entry of the judgment; *Held*, that an appeal lies in favor of the state, from the judgment. *Id.*

3. **SUIT FOR DELINQUENT TAXES AND PENALTIES—SAME CAUSE OF ACTION—WHEN MAY BE SEVERED.** The complaint in this action shows that an action was commenced by the state to recover the delinquent taxes and penalties due on the proceeds of defendant's mine, and thereafter, while said suit was pending and undetermined, the plaintiff, at the instance and by the consent of the defendant, in open court withdrew from the consideration of the court the question of plaintiff's right to recover the penalties in addition to said tax, without prejudice to plaintiff's right to bring an action for said penalties; that thereafter plaintiff brought this suit to recover said penalties: *Held*, upon a demurrer to said complaint, that this action might, although a part of the same cause of action, under the special facts alleged, be maintained for the penalties. *State v. Cal. M. Co.*, 13 Nev. 289.

WITHDRAWAL OF PENALTIES NOT A DISMISSAL OF THE ACTION. *Held*, that the complaint in this action does not show that the former action was dismissed, and that the demurrer upon the ground that there is another action pending for the same cause of action is well taken. *Id.*

4. **SUITS FOR DELINQUENT TAXES.** The rule of strict compliance with every form of law, required in cases where property is sold for taxes without a judgment, is not applicable to suits for delinquent taxes in the courts where jurisdiction has been once acquired. *State v. C. P. R. Co.*, 10 Nev. 47.

5. **DIVISION OF TWENTY-FIVE PER CENTUM PENALTY.** *Hobart v. Huffaker*, 11 Nev. 300.

6. **DISTRICT ATTORNEY HAS NO AUTHORITY** to extend time for payment of penalties due in a suit for delinquent taxes. *State v. Cal. M. Co.*, 15 Nev. 308.

Form of Complaint.

1121. SEC. 49. The complaint in said action may be as follows in form:
State of Nevada, County of _____ [Title of Court.]

The State of Nevada v. A. B. & Co., and the real estate and improvements in [describing them]. The State of Nevada, by C. D., District or Prosecuting Attorney of the county of _____, complains of A. B., and also the real estate and improvements [describing them with the same particularity as in actions of ejectment, or actions for the recovery of personal property], and for cause of action says that between the first Monday in January and the second Monday in August, A. D. one thousand eight hundred and _____, in the county of _____, in the State of Nevada, E. T., then and there being County Assessor of said county, did duly assess and put down on an assessment roll all the real and personal

property in said county subject to taxation, and that said assessment roll was afterward submitted to the Board of Equalization of said county, and was by said board duly equalized as provided by law; that said A. B. was then and there the owner of, and that there was duly assessed to him the above described real estate, improvements upon real estate and certain personal property, and that upon such property there has been duly levied for the fiscal year A. D. eighteen hundred and _____, a state tax of _____ dollars, and a county tax of _____ dollars, amounting in the whole to _____ dollars, all of which is due and unpaid; of which amount _____ dollars was duly assessed and levied against the real estate, and _____ dollars against the improvements aforesaid, and _____ dollars against the personal property. Wherefore, said plaintiff prays judgment against A. B. for the sum of _____ dollars [the whole of said tax], and a separate judgment against said real estate and improvements, for the sum of _____ dollars [the tax due on real estate, improvements and personal property], and the ten per cent damages for non-payment thereof at the time, as required by law, and the additional penalty of twenty-five per centum, also required by law, and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes and of this action.

C. D., District or Prosecuting Attorney, County of _____.

If the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant.

Additional Recitals in Complaint.

1122. SEC. 50. In all suits brought by the District or Prosecuting Attorney of his county, or the attorney of incorporated cities and towns, for delinquent taxes, the said District Attorney is hereby authorized and empowered to make, in the summons and complaint, additional and more certain description than that contained in the assessment roll of the real property assessed and upon which suit is brought for the taxes due thereon, as he may deem proper, whether the same is an estate in fee, possessory claims, or claim to or right of possession to any lands; and where such additional description is made, evidence may be introduced to prove that the property described in the summons and complaint is the same property as that described in the assessment roll; *provided*, that the complaint and summons shall aver such fact, and the judgment and execution, and all proceedings thereafter, shall follow the description given in the assessment roll, and the additional description given in the summons and complaint.

COMPLAINT—DESCRIPTION OF PROPERTY. When the complaint does not contradict the assessment, but merely gives a more particular description, it is proper to admit testimony to show the property described in the assessment roll and the complaint are identical
State v. R. D. M. M. Co., 1 Nev. 523.

Style of Process—Procedure—Notice to Delinquents, Form of—Fees—Summons.

1123. SEC. 51. Upon a complaint in a district court, a summons shall be issued as provided in other civil cases, except that it shall require the defendant and all owners of or claimants to any real estate or improvements described in the summons, known or unknown, to appear and answer the complaint filed in said court on a day certain, which day shall not be less than thirty, nor more than forty days from the date of the summons. The summons so issued shall be served by the Sheriff, as follows:

First—As to the personal defendant, by delivering to and leaving with him a copy of the summons if found within the county. If the personal defendant cannot, after diligent search, be found within the county, then service may be made upon such personal defendant by publishing a notice, substantially in the form hereinafter prescribed, in some newspaper published in the county, if there be one, once each week for three successive weeks; and in case no newspaper is published in the county, or in case a newspaper is published in the county, and, from any cause whatever, the proprietor, manager or chief clerk of such newspaper refuse to publish the same (such facts to be shown by affidavit of the officer serv-

ing said summons), then the notice hereinafter prescribed may be posted at the court house door of the county in which the said suit is commenced, for twenty-one days, and no order of court shall be necessary for such publication or posting, but it shall be the duty of the Sheriff to publish or post said notice as herein provided, when the personal defendant cannot be found within the county, and to return the manner of service on the summons.

Second—As to real estate and improvements thereon, or improvements when assessed to a person other than the owner of the real estate, and as to all owners of or claimants to the same, known or unknown, service of the summons may be made by posting a copy of the summons in some public place on the real estate, or improvements, when assessed separately, for twenty-one days, and also by publishing or posting a notice in the same manner and for the same time as required in cases where the personal defendant cannot be found in the county. The last publication of the notice, and the last day of the twenty-one days, which the copy of the summons is required to be posted, shall expire at least ten days before the return day named in the summons. No other or further service shall be required, and the return of the officer, showing a service of the summons as herein required, shall be conclusive evidence of the due service of the summons upon the defendant named, the real estate and improvements thereon, when assessed separately, and upon all owners of and claimants to the same, known or unknown. If, on the return day named in the summons, the personal defendant fail to appear and answer the complaint, his default may be entered and final judgment entered by the Clerk, as in other civil cases, for the amount of taxes with ten per cent, damages, twenty-five, per centum additional penalty and costs; and if, upon the return day, no person appear and answer for the real estate and improvements thereof [thereon], or for the improvements when assessed separately, then the default of the said real estate and improvements thereon, or of the improvements, when assessed separately, and of all owners of or claimants to the same, known or unknown, may be entered, and final judgment rendered as in other civil cases. The notice required to be published or posted shall be substantially in the following form, and may include any number of cases in which the return day of the summons shall be the same:

State of Nevada, County of _____; District or Prosecuting Attorney's Office.

Notice of suits commenced.—To the following named defendants, and to all owners of, or claimants to the real estate and improvements thereon, or improvements, when assessed separately, hereinafter described, known or unknown. You are hereby notified that suits have been commenced in the [name of court, where held, etc.] by the State of Nevada, plaintiff, against each of the defendants hereinafter named, and each of the following described tracts or parcels of land with the improvements thereon, and improvements when separately assessed, and all owners of, or claimants to the same, known or unknown, to recover the tax and delinquency assessed to said defendant against said property, for the fiscal year commencing _____, and ending _____, and that a summons has been duly issued in each case; and you are further notified that unless you appear and answer the complaint filed in said cause, on or before the _____ day of _____, 18__, judgment will be taken against you, and the real estate and improvements herein described, for the amount of tax and delinquency specified, and cost of suit. Tax and delinquency A. B., describe real estate and improvements as in summons, \$____. C. D., personal property, assessed at \$____.

C. D., District or Prosecuting Attorney, _____ County.

It shall be the duty of the District or Prosecuting Attorney to file in the office of the County Recorder a copy of each notice published or posted, with the affidavit of the publisher or foreman in the office, setting forth the date of each publication of the notice, the paper in which the same was published; and the officer shall file a copy of the notice posted, with an affidavit of the time and place of posting, which copies so filed as aforesaid, or certified copies thereof, shall

be prima facie evidence of all facts therein contained, or contained in the affidavit, in all courts in this state. The publisher shall be entitled to two dollars for each case for publishing said notice, including the making of the affidavit. The Recorder shall be entitled to fifty cents for filing each notice of publication, including affidavit; and said sums so allowed shall be taxed and collected as other costs in the case, from the defendant, and in no case shall they be a charge against or collected from the county or state.

Answer of Defendant, What May Set Up.

1124. SEC. 52. The defendant may answer, which answer shall be verified:

First—That the taxes have been paid before suit.

Second—That the taxes with costs have been paid since suit, or that such property is exempt from taxation under the provisions of section five of this Act.

Third—Denying all claim, title or interest in the property, assessed at the time of the assessment.

Fourth—That the land is situate in and has been duly assessed in another county, and the taxes thereon paid.

Fifth—Fraud in the assessment, or in failing to comply with the provisions of this Act; or that the assessment is out of proportion to and above the actual cash value of the property assessed; *provided, however*, that in such last mentioned case, where the defense is based upon the ground that the assessment is above the value of the property, the defense shall only be effectual as to the proportion of the tax based upon such excess of valuation, but in no such case shall an entire assessment be declared void. *As amended, Stats. 1895, 39.*

1. Humboldt Co. v. Lander Co., 24 Nev.; State v. V. & T. R. Co., 24 Nev.

2. DEFENSE TO SUIT FOR DELINQUENT TAXES. Prior to the amendment of section 52 of the general revenue law, the defense by a defendant, sued for delinquent taxes, "that the assessment is out of proportion to and above the actual cash value of the property assessed," could not have been made. State v. V. & T. R. Co., 23 Nev. 283.

See State v. V. & T. R. Co., 23 Nev. 432.

3. PAYMENT OF TAXES—WHEN A DEFENSE. Where property is claimed for taxation by two different counties, its regular assessment by one of the counties, and the payment of the taxes to that county prior to the commencement of the action for delinquent taxes in the other county, is a complete defense to the latter action. State v. C. P. R. Co., 21 Nev. 172.

4. TAX SUIT—EVASIVE ANSWER OF PAYMENT. In a suit to recover a certain amount of delinquent taxes, where defendant pleaded that he had paid plaintiff a certain less sum and that plaintiff had accepted and received the same in full satisfaction and discharge: *Held*, that the pleading did not amount to an answer that the taxes had been paid or constitute a defense to the action. State v. C. P. R. Co., 9 Nev. 79.

5. TAX SUIT—FRAUD IN ASSESSMENT AS MATTER OF DEFENSE. Where, in a suit against the Central Pacific Railroad Company to recover taxes under an assessment made in the absence of a legal statement, defendant set up in answer that the assessment was made by the Assessor, fraudulently and contrary to his official judgment, at a sum nearly three times greater than the fair value of the property: *Held*, that such answer stated good matter of defense and was not demurrable. State v. C. P. R. Co., 7 Nev. 89.

MEANING OF ALLEGATION OF "FAIR VALUATION." Where, in answer to a tax suit, the defense was fraud in the assessment, and it was alleged that in a certain statement furnished the Assessor, (but which was informal) the property was "set down as of the value of \$3,000 per mile, which was a fair valuation thereof, and so known and believed by the Assessor": *Held*, that this amounted to an allegation that \$3,000 per mile was a just and fair value, and consequently that an assessment of \$15,000 per mile was excessive. *Id.*

6. DEFENSE IN TAX SUIT—CIVIL PRACTICE ACT—DEMURRER. The defendant in a suit brought for the collection of delinquent taxes has a right to interpose a demurrer to the complaint upon any of the grounds set forth as a cause of demurrer in the Civil Practice Act. State v. Yellow Jacket S. M. Co., 14 Nev. 220.

7. INSUFFICIENCY OF ALLEGATION. An allegation that property was assessed "in an amount greatly in excess of that authorized by law" is not sufficient to raise any issue as to the true cash value of the property, and to raise such issue such value should be alleged. State v. Sadler, 21 Nev. 13.

STATUTORY PROVISION.—NECESSARY AVERMENT. The statute expressly provides that "where the person complaining of the assessment has refused to give the Assessor his list under oath, as required under this Act, no reduction shall be made by the Board of Equalization in the assessment made by the Assessor." *Held*, that an allegation that defendant made application to the Board of Equalization for a reduction of his assessment must include the averment that the sworn statement was furnished to the Assessor, or that no demand for it was made, in order to constitute a defense to an action for the taxes. *Id.*

8. SUFFICIENCY OF ANSWER. In an action to recover delinquent taxes and penalties an answer denying a possessory claim to the lands and stating facts showing that the rights claimed are untaxable, presents a good defense, although it does not deny all claim, title or interest in the property assessed. *State v. C. P. R. R.*, 21 Nev. 94.

Character of Judgment and How Entered—Taxes for Personal Property a Lien on Real Property—Answer—Costs and Penalties as Liquidated Damages.

1125. SEC. 53. In case judgment is rendered for the defendant, it shall be general, without costs, and may be entered in favor of some one or more of them, and against others, as in other civil cases; but when defendants have no claim or title to the property at the time of assessment, judgment may, notwithstanding, be entered against the property by continuing the suit, and summoning the owner, known or unknown, as provided in section fifty-one of this Act. In case judgment is rendered for plaintiff, it may be entered against such defendant, or defendants, as are found liable for the tax, and for such portions as he or they may be found liable for. Judgment may be entered against the real estate, improvements, and personal property, for the taxes and costs severally due thereon; and when it appears on the assessment roll, and is not disproved at the trial, that the real estate, improvements, and personal property belong [belonged] to the same person or persons at the time assessments were made, then the whole tax of such person or persons for that year may be recovered out of any of such real estate, improvements, or personal property, or out of any other property of the defendant or defendants, at the time of levy under execution; *provided*, that upon such real estate and improvements assessed, lien shall attach thereon for the taxes due upon the personal property, and shall not be released from such lien until all taxes are paid, as provided in section three of this Act. Such judgments shall be a lien as aforesaid, as in other civil cases where judgments are rendered in the district court. Such liens shall not be extinguished until the delinquent tax and cost of sale for the same shall have been paid. The Clerk of the district court may issue execution upon judgments rendered in his court as in other civil cases. Judgment may be rendered by default, for want of an answer, as in other civil cases. In case any person shall be sued for taxes on any lands or improvements, of which he was the owner, or in which he had a claim or interest at the time of the institution of suit, and shall be discharged from personal liability, under an answer in conformity with the third subdivision of section fifty-two of this Act, and such lands or improvements shall be sold under a judgment obtained against it, and shall thereafter be redeemed by such discharged defendant, or if he shall pay the taxes and costs to prevent a sale, then such personally discharged defendant shall have, and is hereby given, the right of recovery over against the owner at the time of the assessment, or any subsequent purchaser, for the full sum of taxes and costs, or redemption money paid. And in every case of such recovery, the judgment shall, in addition to the taxes and costs, or in addition to the redemption money paid, include twenty-five per centum of the amount of taxes and costs of redemption money as liquidated damages; and the receipt of the District or Prosecuting Attorney for taxes and costs, or of the ex officio Tax Receiver for the redemption money, shall be prima facie evidence of the debt and of its amount.

Possession of Property Obtained, How—Redemption—Property of Persons Under Legal Disability—Exceptions.

1126. SEC. 54. An Act to regulate proceedings in civil cases in the courts of justice in the State of Nevada, approved March 9, 1869, and the several amend-

ments thereto, or amendments which may hereafter be made thereto, or laws passed under the government of the State of Nevada, so far as the same are not inconsistent with the provisions of this Act, are hereby made applicable to the proceedings under this Act, and any deed derived from the sale of real property under this Act shall be conclusive evidence of the title, except as against actual frauds or the payment of the taxes, by one not a party to the action or judgment in or upon which such sale was made, and shall entitle the holder thereof to possession of such property, which possession may be obtained by action in a justice's court for the unlawful withholding thereof in the same manner as where tenants hold over after the expiration of their lease; *provided*, that the officer in selling such property shall only sell the smallest quantity that will pay the judgment and all costs. All sales of real estate sold for taxes shall be subject to redemption at any time within six months after date of sale, by the payment of all costs connected with the suit and sale, together with interest at the rate of three per cent per month from date of sale up to time of redemption. When property is sold belonging to minors, or persons under legal disability, they shall have until six months after such disability is removed to redeem such property, as in other civil cases, by paying the whole amount of the judgment and all subsequent taxes and interests paid by and due to the purchaser at such sale, and fifty per cent in addition thereto. But this provision shall not apply when the executor or administrator of the estate, or the father, or, in case of his death, the mother or guardian of such minor children, or insane person, has been personally served with process.

Treasurer May Buy as Trustee—No Fees for Services—How Sold.

1127. SEC. 55. It shall be the duty of the Treasurers of the several counties of this state to attend all sales of property for delinquent taxes, and in case there shall be no bidders for any parcel or parcels of property offered for sale, to pay such tax and costs thereon, then such Treasurers may bid for and buy in such parcel or parcels of property as others will not buy; and such Treasurers shall take certificates of sale, or deeds, for such property, as other private buyers, specifying the trust aforesaid; and such Treasurers, and their successors in office, shall hold the property so bought in by them in trust for the use and benefit of the state and county, and any officers having fees due them in such cases, subject to redemption provided for by law, and subject in all cases to the trust aforesaid. Redemption may be made from such Treasurers in the same manner and upon the same terms as from any private buyer. When the time allowed by law for redemption shall have expired, and no redemption shall have been made, the officer who made such sale shall execute and deliver to such Treasurer who bought in such property a deed of the same, in trust as aforesaid; and such Treasurer, and his successors in office, upon obtaining a deed of any property, in trust as aforesaid, under the provisions of this Act, shall hold such property in trust until the same is sold, when, upon an order entered upon the record of the proceedings of the Board of Commissioners of his county, such Treasurer, or his successor in office, for a consideration mentioned in such order, shall make, execute and deliver, upon the payment of such consideration to him, to any purchaser an absolute deed, discharged of any trust, of the property mentioned in such order of the Commissioners.

Property Held in Trust May Be Rented—Rents, How Apportioned—Treasurer to Make Statement.

1128. SEC. 56. While such property is held in trust, as in this Act provided, such Treasurer, or his successor in office, shall collect any rents arising from the property purchased by him, as other private persons do, during the time such property is subject to redemption; and after the time of redemption has expired, until such property can be sold, he may rent the same, with the approval of the Board of Commissioners, for a price to be fixed in their minutes. Such rents shall be paid out by the Treasurer, or his successor in office, as follows:

First—To the payment of the costs and taxes for which it was sold, with the percentage allowed for redemption.

Second—To the payment of any taxes afterward accruing upon such property.

Third—Any balance shall be paid into the general fund of his county. The price for which any property shall be sold shall be appropriated in the same manner as the rents are directed to be paid in this section. The Treasurer, or his successor in office, shall file in the office of the County Auditor a monthly statement, on the first Monday in each month, of the amount of property sold and rents collected during the past month; and upon any money being paid him for purchase or rent, shall give a statement of the amount thereof to the person, who shall file the same with the County Auditor; and such Auditor shall give the person paying such money a receipt for the same, as having been paid to the Treasurer, and expressing the purpose or consideration upon which such payment was made.

Property to Be Included in Certificate of Sale.

1129. SEC. 57. The officer selling any property to a County Treasurer, in trust, as provided in this Act, shall embrace in one certificate of sale all property bid off by such Treasurer in any one day; and, at the expiration of the time for redemption, shall in one deed convey, in trust, to the Treasurer who bought such property, or to his successor in office, all property sold to such Treasurer and remaining unredeemed at any time after the expiration of the time for redemption; and the Recorder of the county shall record such certificates and deeds without payment of his fees until such property shall be sold or rented to pay the same.

Property Held in Trust to Be Assessed—Taxes Paid from Rent, When.

1130. SEC. 58. During the time any property is held in trust, under the provisions of this Act, it shall be annually assessed to such Treasurer, and his successors in office, in the same manner that the taxable property of private persons is assessed, except that such assessment shall express that it is made against him as a trustee. But no proceedings shall be taken to enforce the collection of such taxes against the trustee. When the property is sold or rented for sufficient to pay the taxes and costs legally chargeable against such property, then the same shall be, by the trustee, fully paid; and in case any parcel of property shall not be of sufficient value to pay all the tax, costs and percentage legally chargeable against the same, then the Board of Commissioners, upon a sale of such property, may remit the balance of such taxes over and above its value.

Allowance to Treasurer—Redemption Money, How Distributed—No Fees from County.

1131. SEC. 59. The County Treasurer, for his services under this Act, shall be allowed, upon the sale of any parcel of property held by him in trust or out of its rents, a reasonable compensation for his trouble, to be fixed by the Board of Commissioners in each case; and out of the sale price or rents of any property of which he is trustee, the Treasurer shall pay the costs due any officer for the enforcement of the tax upon such parcel of property, and all taxes owing thereon; and upon the redemption of any property from him as trustee, shall pay the redemption money over to any officers having fees due them from such parcels of property, and pay the tax for which it was sold and redemption percentage according to the proportion such fees respectively bear to such tax. In no case shall any service rendered by any officer under this Act become or be allowed as a charge against the county, nor shall the sale price or rent, or redemption money of any one parcel of property be appropriated to pay any cost or tax upon any other parcel of property than that so sold, rented or redeemed; and after paying all the tax and costs upon any one parcel of property, any balance remaining in the hands of the trustee shall by him be paid into the general fund of the county.

Treasurer Liable on His Bond.

1132. SEC. 60. Every County Treasurer and his successor in office, becoming trustees under the provisions of this Act, shall be liable upon his and their official bond for any misfeasance, malfeasance, failure or neglect to perform faithfully all the duties of their trust.

Amount of Fees—Costs May Be Apportioned by Court—Fees, How Collected.

1133. SEC. 61. There shall be allowed to all officers, except District or Prosecuting Attorneys, the same fees as are allowed in other civil cases. All officers shall perform such services as may be required of them under this Act without the payment of fees in advance. All costs shall be taxed and entered in the judgment against the person and the real estate and the improvements, when the judgment is the same against all; but if the judgment against the person and the property is for different sums, then the costs may be apportioned by the court as the same may be deemed just; *provided*, that no fees or costs shall be paid to any officer unless the same be collected from the defendant, except when property sold for taxes is purchased by the county, in which case the said county shall pay all fees and costs properly charged or taxed against such property, and the Board of Commissioners shall allow the fees and costs provided for in this section, and direct the same to be paid out of the general fund of the county.

Fitch v. Elko Co., 8 Nev. 271.

COUNTY OFFICERS PREFERRED CREDITORS IN ASSESSMENT AND COLLECTION OF TAXES. Grimes v. Goodell, 3 Nev. 79.

Duties of District Attorney on Collection of Taxes.

1134. SEC. 62. The District or Prosecuting Attorney shall, on the receipt of any money for taxes, enter the same on his delinquent list, opposite the description of the property, and shall, on Monday in each week, after the time fixed in this Act for the commencement of actions against delinquent taxpayers, pay to the County Treasurer all moneys collected by him for taxes, taking duplicate receipts for the amounts so paid, one of which receipts he shall on the same day file with the Auditor, and shall at the same time file with said Auditor a list of all judgments obtained by him up to that date for taxes under the provisions of this Act, stating therein the names of the defendants, if known, or if unknown, a description of the property, the amount of each judgment and the name of the court in which said judgment was obtained. He shall, on the Saturday next preceding the first Monday in April in each year, pay to the County Treasurer all moneys received by him for taxes and not previously paid over, taking duplicate receipts therefor, one of which shall in like manner be filed with the Auditor, and shall at the same time file with the Auditor a list of all judgments obtained by him and not previously filed, as herein provided. He shall also, on the day last mentioned, make and file with the County Auditor an affidavit stating that he has paid to the County Treasurer all moneys collected by him for taxes prior to that date, and filed the receipts therefor, and that the several lists filed by him, as herein directed, contain all judgments obtained by him under the provisions of this Act.

District Attorney to Settle With Auditor—County Commissioners to Strike Off.

1135. SEC. 63. On the first Monday of April in each year, the District or Prosecuting Attorney shall attend at the office of the County Auditor with the delinquent list or lists, and the Auditor shall then carefully compare the same with the Treasurer's receipts and statements filed by the District or Prosecuting Attorney; and if the same shall be found to be correct, the Auditor shall give to the District or Prosecuting Attorney a receipt specifying the same. The District or Prosecuting Attorney shall at the same time deliver to the Auditor a written statement of all delinquent taxes upon said delinquent list or lists remaining uncollected, or for which suit has not been brought, with his reason in detail for not being able to collect the same, or for not bringing suit; and the

Auditor shall immediately file the said delinquent list or lists and statement with the Clerk of the Board of County Commissioners, and the Board of County Commissioners shall revise the same by striking off such taxes as cannot be collected. The delinquent list or lists shall then be returned to the Auditor, who shall note the changes made, and shall then return the same to the District or Prosecuting Attorney, taking his receipt therefor. The County Auditor shall, in his report to the State Controller, state the amounts stricken off the delinquent list or lists by the Board of County Commissioners.

ABOVE SECTION CONSTRUED. The object of the section authorizing the Board of Commissioners to strike off from the delinquent list such taxes as cannot be collected, is to provide a means of balancing the account between the Auditor and District Attorney; the delinquent taxpayer cannot claim any advantage from it. *State v. C. P. R. Co.*, 10 Nev. 87.

DISTRICT ATTORNEY AUTHORIZED TO COMMENCE SUIT. The District Attorney is authorized to commence suit for delinquent taxes stricken off the delinquent list by a void order of the Board of County Commissioners. *Id.*

Penalties for Failure of District Attorney to Pay Over.

1136. SEC. 64. If any District or Prosecuting Attorney shall fail or refuse to pay to the County Treasurer, as provided in this Act, any money collected by him for taxes, he shall forfeit his office, and be forthwith removed therefrom, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment.

Fee in Tax Suit.

1137. SEC. 65. The District or Prosecuting Attorney shall be entitled, on each suit for the collection of delinquent taxes, to a fee of five dollars, with five per cent on the amount delinquent. Said fee and percentage shall be taxed and collected as costs, but in no case to be charged against the county or state.

PERCENTAGE OF DISTRICT ATTORNEY. *Held*, that the District Attorney is entitled to five per cent on the tax and penalty. *State v. Cal. M. Co.*, 13 Nev. 289.

COLLECTION OF TAXES BY THE ASSESSOR ON CERTAIN PERSONAL PROPERTY.

Duties of Assessor as to Personal Property.

1138. SEC. 66. The County Assessor in the several counties in this state, when he assesses the property of any person or persons, company or corporation liable to taxation, who do not own real estate within the county of sufficient value, in the Assessor's judgment, to pay the taxes on both his or their real and personal property, shall proceed immediately to collect the taxes on the personal property so assessed; but the party paying such taxes shall not be thereby deprived of his right to have such assessment equalized, and if, upon such equalization, the value be reduced, the taxes paid shall be refunded to such party from the county treasury upon the order of the Board of County Commissioners, in proportion to the reduction of the value made.

UNIFORM AND EQUAL VALUATION—TRUE CASH VALUE—INSUFFICIENT SHOWING. An agreed statement that the Assessor made a uniform and equal valuation of the kind, character, and species of merchandise to which defendant's belonged, does not show that the valuation of defendant's property, as made by the Assessor, was uniform with other kinds of personal property on the assessment roll, or that it was not equalized by the board at its true cash value, and is, therefore, insufficient to show that the raised valuation made by the board was unjust. *State v. Meyers*, 23 Nev. 274.

Assessor May Sell on Summary Process—Certificate to Purchaser—Court May Issue Citation—Fees, How Collected—Unlawful Acts, Penalties For.

1139. SEC. 67. If the person or persons, company or corporation so assessed shall neglect or refuse to pay such taxes on demand of the Assessor, the Assessor, or his deputy, shall seize sufficient of the personal property of the person or persons, company or corporation so neglecting or refusing to pay, to satisfy the taxes

and costs, and shall post a notice of such seizure, with a description of the property, in three public places in the township or district where it is seized, and shall at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned in the notice, to the highest bidder, for gold or silver coin of the United States, a sufficient quantity of said property to pay the taxes and expenses incurred; and for this service the Assessor shall be allowed from the delinquent party a fee of three dollars. Upon payment of the purchase money, he shall deliver to the purchaser of the property sold, with a certificate of the sale, the amount of taxes or assessment, and the expenses thereon, for which the property was sold, whereupon the title of the property so sold shall rest absolutely in the purchaser. If, in any instance, the County Assessor shall be unable to find, seize and sell sufficient of the property of such person, persons, company or corporation to pay such taxes and costs of sale; and such person, persons, company or corporation shall neglect or refuse, on request of the Assessor, to pay the same, or neglect and refuse to turn out to the Assessor property sufficient to pay such taxes and costs of sale, it shall be the duty of the Assessor, if the sum exceed three hundred dollars, to go before the district court or the Judge thereof, at chambers, and in cases of three hundred dollars and less sums, then before a Justice of the Peace of the township wherein such party may reside, and make affidavit of the fact of assessment, the amount of taxes, the inability to find and seize property sufficient to pay such taxes and costs of sale; also, the fact of neglect or refusal to pay the same, or turn out property sufficient to pay the same and costs of sale. And on the filing of such affidavit, the court or Judge, or Justice of the Peace, as the case may be, shall issue a citation, ordering the party to appear forthwith, or at a subsequent period not to exceed five days, before such court, Judge or Justice of the Peace to answer under oath concerning his property. Such citation may be served by the Assessor, Sheriff, or any Constable of the county, and shall be served by delivering a copy thereof to such party personally. On the examination, if it shall appear that such party or parties have any money, goods, chattels or effects, the Judge or Justice of the Peace shall order sufficient thereof to be turned out to the Assessor to satisfy such taxes and costs of sale, and also costs of proceeding on the citation; and in case of a willful neglect or refusal by such party either to obey the order of citation or the order to pay, or to turn out property aforesaid, such party or parties shall be deemed in contempt of such court, Judge or Justice of the Peace, and may be proceeded against as in other cases of contempt, in civil cases in the courts of justice in this state. For service under the provisions of this section, such fees shall be allowed as for similar services in civil cases, to be collected only from parties owing such taxes. In other respects than herein provided, the proceedings under this section shall be conducted as provided in the Civil Practice Act of this state regulating proceedings supplemental to executions; and in case it appears from the affidavit of the Assessor that such person or persons owing such taxes is about to abscond from the county, or is about to convey his property with intent fraudulently to evade the payment of such taxes, in such cases the citation herein mentioned may direct the officer serving the same, to arrest such party or parties and bring him, her or them before the court, Judge or Justice of the Peace issuing the same. It shall not be lawful for a party served with the citation mentioned in this section, to sell or transfer his, her or their property or effects, so as to defeat the collection of taxes mentioned, or costs, or any part thereof. And any person or persons so doing shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine not to exceed two hundred dollars; and should the said taxes fail to be collected by such process, then no future liability shall attach to said Assessor therefor.

Assessor to Pay Over.

1140. SEC. 68. The Assessor shall, on the first Monday of each month, return to the Auditor a list of all collections made under the provisions of the preceding

section, under oath, and shall, at the same time, return all the original schedules of assessment of such property made the previous month, which schedules, after comparing with the sworn list of collections, the Auditor shall file in his office, and shall enter upon the assessment roll of his county for that year, when the same shall have come into his hands, and mark the word "paid" opposite the name of each party whose taxes are so paid. It shall also be the duty of the Assessor, on the first Monday of each month, to pay over to the Treasurer of the county all moneys collected under the provisions of the preceding section, taking duplicate receipts from said Treasurer for the amount so paid, one of which receipts the Assessor shall file with the Auditor.

Penalty for Assessor's Neglect—Duties of District Attorney and Auditor.

1141. SEC. 69. Should the County Assessor neglect or refuse to make the monthly statement of his collections of movable personal property tax, as required by law, or to file the original schedules of his assessments of such property, he shall be guilty of a misdemeanor in office, and shall, on conviction, be liable to a fine of not less than one hundred dollars or more than five hundred dollars, and imprisonment in the county jail for not less than ten and not more than one hundred days, or both such fine and imprisonment, and shall be removed from office. In case of such neglect and refusal, the County Auditor shall immediately inform the District Attorney of his county of such facts, whose duty it is hereby made to commence proceedings against the Assessor under this section.

Controller to Prepare Blank Receipts.

1142. SEC. 70. It is made the duty of the State Controller to prepare suitable blank receipts, to be issued by the several County Assessors on the payment to them of the taxes on movable personal property. Such blank tax receipts shall be of the form selected by the Controller, and shall be consecutively numbered by him for each county, and shall be countersigned by the County Auditor.

Controller to Send Receipts to Auditor.

1143. SEC. 71. Before the first of March in each year, the State Controller shall transmit to the several County Auditors a sufficient number of said blank tax receipts for use in each county. The County Auditor, on receiving such tax receipts, shall receipt to the Controller for the number so received, and shall immediately countersign and deliver them to the County Assessor, taking his receipt for the number so delivered.

Penalties Imposed on Assessors.

1144. SEC. 72. Should the County Assessor give any other receipt on the payment to him of any tax on movable personal property than that provided for in this Act, he shall be guilty of a felony, and on conviction thereof shall be punished by imprisonment in the state prison for a term of not less than one year or more than five years, and shall be removed from office.

Penalties Imposed on County Auditors for Neglect—Controller May Bring Suit to Enforce.

1145. SEC. 73. The County Auditor shall be liable on his official bonds for double the amount of the loss that the state and county may sustain through the defalcation of the Assessor, or otherwise, in cases where he has not notified the District Attorney of the neglect or refusal of the Assessor to make his monthly statement, under oath, of collection of the tax on movable personal property, as required by law. The State Controller shall have direction and control of all suits brought against the County Auditor under this Act, and a copy of the statement of amount lost by the state and county, made out and certified by the Controller, with the official seal affixed thereto, shall be sufficient evidence to support an action in any court of competent jurisdiction for the amount of such loss, without proof of the signature or official character of such Controller, subject, however, to the right of the defendant to plead and give in evidence as in other

actions, all such matters as shall be legal and proper for his defense or discharge. All moneys recovered under such suit against the County Auditor shall go, one-half into the general fund of the state, and one-half into the general fund of the county.

Assessor to Return Unused Blanks.

1146. SEC. 74. On the first Monday in December of each year, the Assessor shall return to the County Auditor all blank receipts for taxes on movable personal property received by him and not used, and also all stubs of the receipts used; and the County Auditor, after comparing the stubs of the receipts used with the monthly sworn statement made by the Assessor, and the original schedules of assessment of movable personal property on file in his office, shall immediately return such unused receipts and said stubs to the State Controller.

TAXES ON PROCEEDS OF THE MINES.

Payments Quarterly Same Rate as Other Taxes.

1147. SEC. 75. All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes quarterly in the manner following: From the gross yield returned, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale, and the actual cost of reduction or sale; and the remainder shall be deemed the net proceeds, and shall be assessed and taxed at the same rate *ad valorem*, as other property is taxed, as provided in this Act; *provided*, that there shall be no allowance made for expenses incurred prior to the quarter for which the assessment is made, excepting tailings and mines producing not more than one ton of ore or mineral-bearing material per day, for which expenses may be deducted for the four consecutive quarters preceding the quarter for which the assessment is made; *and, provided further*, that the net proceeds shall not a second time be assessed for taxation so long as such proceeds, in the form produced, remain in the possession of the person, firm or corporation producing the same.

1. PROCEEDS OF MINES ARE PERSONAL PROPERTY, and as such are subject to taxation. *Virginia City v. Chollar-Potosi G. & S. M. Co.*, 2 Nev. 91.
2. MINES AND MINING INTERESTS FAVORED. The taxation of the proceeds of mines is more favorable than if taxes were imposed directly upon the mines. *State v. Kruttschnitt*, 4 Nev. 178.
3. TAX ON PROCEEDS OF MINES—COLLECTED QUARTERLY. In construing the Act providing for the taxation of the net proceeds of mines: *Held*, that there is nothing to prevent the collection of such taxes quarterly. (*State v. Eureka Con. M. Co.*, 8 Nev. 16, affirmed.) *State v. Cal. M. Co.*, 13 Nev. 203; *Virginia City v. C. P. Co.*, 2 Nev. 86; *State v. Eastabrook*, 4 Nev. 178; *State v. Manhattan S. M. Co.*, 4 Nev. 318; *State v. Kruttschnitt*, 4 Nev. 178.
4. ASSESSMENT, LEVY, COLLECTION. Taxes on proceeds of mines for the first quarter cannot be assessed, levied or collected, before the first Monday of April of that year. *White Pine Co. v. Ash*, 5 Nev. 279.

Tax on Proceeds of Mines a Lien on Mines.

1148. SEC. 76. Every tax levied under the authority or provisions of this Act on the proceeds of mines, is hereby made a lien on the mines or mining claims, from which ores or minerals bearing gold, silver, or other valuable metal or material is extracted for sale or reduction; which lien shall attach on the first day of January, April, July and October of each year, for the quarter year commencing on those days respectively, and shall not be removed or satisfied until such taxes are all paid, or the title to such mines or mining claims shall have absolutely vested in a purchaser under a sale for said taxes.

Time and Manner of Making Assessment—Assessed and Collected, Where.

1149. SEC. 77. Between the first Monday in January and the first Monday in February, also between the first Monday in April and the first Monday in May, also between the first Monday in July and the first Monday in August, also between the first Monday in October and the first Monday in November, in each year, the County Assessor shall ascertain, by diligent inquiry and examination, the name, title, and location of all mines and mining claims in his county, from which ores, minerals, or tailings are being extracted or worked, and also the names of all persons, corporations, associations, companies, or firms owning, claiming or having possession or control thereof, and he shall then ascertain and determine, as provided in this Act, the number of tons and the value per ton of all ores, quartz, minerals or tailings extracted for reduction or sale from the said mines or mining claims as aforesaid, and shall list and assess the same to the person, firm, corporation, association or company extracting the ores or minerals as aforesaid, or owning or having possession, charge or control of said mine or mining claim. The taxes shall be assessed and collected in the county where such mines or tailings are situated.

Statement Furnished Assessor—Penalty for False Statement.

1150. SEC. 78. For the purpose of enabling the Assessor to make such assessment, he shall demand from the President, Secretary, Superintendent, Treasurer or Managing Agent of each corporation or association, and from each firm or persons engaged in extracting ores or minerals, or working tailings within his county, a statement, under oath or affirmation, of the total number of tons extracted, or worked, or sold by him or them during the preceding quarter year; the gross yield or value of the same in dollars and cents; the actual cost of extracting the same from the mine or tailings deposit; the actual cost of transportation of the same to place of reduction or sale, and the actual cost of reduction or sale of the same, for the last preceding three months respectively. If any person shall knowingly make or give, under oath or affirmation, as aforesaid, a false statement to the Assessor, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law for the punishment of that crime.

1. SWORN STATEMENT MUST SHOW AMOUNT AND VALUE OF PRODUCT. The revenue laws require the sworn statement of the product of a mine to show the amount of such product in weight, and not merely the amount in dollars; both are to be given. *State v. Kruttschnitt*, 4 Nev. 178.

ASSESSORS ARE NOT BOUND BY SWORN STATEMENT. *Id.*

2. IRRELEVANT MATTER IN STATEMENT GOES FOR NOTHING. *State v. Eureka Con.*, 8 Nev. 15.

Books Open to Inspection—Penalty for Refusal to Show Books.

1151. SEC. 79. The account books relating to or used in the transaction of the business [of] any person, firm, company, association or corporation, engaged in working tailings or in extracting ores or minerals for reduction or sale, shall, on demand of the Assessor or his deputy, be open to his inspection. If any such person, or the President, Superintendent, Treasurer, Secretary or Managing Agent or person having charge of said books of such person, firm, company, association or corporation shall neglect or refuse to give, on demand, to the Assessor or his deputy access to the books aforesaid, he or they shall be deemed guilty of a misdemeanor, shall be complained of by the Assessor or his deputy, thereupon arrested and tried, and on conviction thereof, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment.

Failure to Make Statement, Penalty.

1152. SEC. 80. In case of neglect or refusal of any person, firm, association, President, Secretary, Treasurer, Superintendent or Managing Agent, or the person

having charge of the books or mines of any person, firm, company, association or corporation, engaged in working tailings or in extracting ores or minerals, for reduction or sale, to give under oath or affirmation the statement required by this Act, the Assessor or his deputy shall make an estimate, from the best sources within his reach, of the number of all tons of tailings, ores or minerals worked or extracted by such person, firm, company, association or corporation, for the preceding quarter, and assess the same to him or them without making any deduction for actual costs of any kind, and such assessment shall be as binding, effectual and lawful as if made upon a sworn or affirmed statement.

Equalization.

1153. SEC. 81. Any person, firm, company, association or corporation, except such as shall have willfully refused to give to the Assessor or his deputy, on demand, access to the books of said person, firm, company, association or corporation, feeling aggrieved on account of the assessment made as in this Act provided, may appear before the Board of County Commissioners, at any regular session or special session thereof, called for that purpose, and ask to have such assessment equalized; and such Board may proceed to hear the allegations of the party complaining, and of the Assessor or his deputy, and such other evidence as may be produced by either party, and by an order entered in the minutes of their proceedings, equalize such assessment by adding to or deducting therefrom, as may seem just, and such action shall be final.

COMPLAINT, WHEN TO BE MADE. A taxpayer on the proceeds of mines may complain of inequality of assessment upon him at any time before the taxes are collected or sued for *State v. Manhattan S. M. Co.*, 4 Nev. 318.

Account of Ores to Be Kept by Mill Owner, etc.—Assessor to Demand Exhibition of Books—Penalty for Refusal.

1154. SEC. 82. The owner, agent or person owning or having charge or control of any mill, arastra, smelting furnace, or any process by which gold or silver, or other taxable products, are extracted, shall keep, or cause to be kept, an accurate account of the number of tons of ores, quartz, or minerals reduced or smelted, the name of the mine or mining claim from which said ore, quartz or mineral was taken, the amount and value of the bullion or other taxable product derived by smelting or reduction from the ore, quartz or mineral from such mine or mining claim, and shall, upon demand of the Assessor, or his deputy, give him a statement of the same, under oath or affirmation. And if the owner, agent or person, as aforesaid, neglect or refuse to give the statement as required in this section, the Assessor, or his deputy, shall have the right to demand, and it [is] hereby made his duty to demand access to and inspection of all books of said owner, agent or person owning or having the charge or control of any mill, arastra, smelting furnace or other process by which gold and silver or other taxable products are extracted, relating to the business of such mill, arastra, smelting furnace or other process, as aforesaid; and if such owner, agent or person, as aforesaid, shall, on demand of the Assessor, or his deputy, neglect or refuse to give a statement, under oath or affirmation, as provided in this section, or refuse to give access to the Assessor, or his deputy, to the books, as aforesaid, such owner, agent or person shall be guilty of a misdemeanor, and shall be arrested on complaint of the Assessor, or his deputy, and on conviction before a Justice of the Peace, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty nor more than ninety days, or by both such fine and imprisonment.

Statement of Yield to Be Made by Assessor.

1155. SEC. 83. From the statements or information so received, it is hereby made the duty of the Assessor to make out immediately, a certified statement or statements of the number of tons of ores, quartz, or minerals, with the yield

Assessor to Give Notice, When and How--Not to Receive Taxes, When--Delinquent Tax List Filed, When.

1159. SEC. 87. Upon receiving the assessment roll of the taxes levied upon the proceeds of the mines, as provided in this Act, for any quarter, the Assessor shall forthwith give notice by publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places in his county, that the taxes on the proceeds of the mines, for the preceding quarter, are due and payable, and that the laws with regard to their collection will be strictly enforced, and shall proceed to collect the taxes by demanding the same (either in person or by deputy) of every person, firm, corporation, association or company against whom they are assessed, his or their agent or agents, or the President, Treasurer or Trustee of any incorporated company so assessed. He shall use all due diligence, and make personal demand for taxes, if possible, on all persons, firms, corporations or companies owning the same, on or before the second Mondays in March, June, September and December, after which he need not make such personal demand, but shall retain the assessment roll in his office, and receive the taxes offered to be paid thereon, until the close of his official business on the third Monday in March, June, September, and December in each year. After said dates it shall be unlawful for him to receive or receipt for any taxes due on the assessment for the preceding quarter respectively; but he shall immediately ascertain the total amount of taxes then delinquent on the assessment of the immediate preceding quarter, and file in the office of the Auditor a statement of said amounts, verified by the oath of himself or deputy, and shall proceed to make out a copy of the quarterly assessment roll as far as relates to delinquent taxpayers. Said list shall be verified by the oath of himself or deputy, and shall be by him filed in the office of the County Auditor, as follows: The delinquent list for the quarter commencing January first and ending March thirty-first, shall be filed on the fourth Monday in June in each year; the delinquent list for the quarter commencing April first and ending June thirtieth, shall be filed on the fourth Monday in September in each year; the delinquent list for the quarter commencing July first and ending September thirtieth, shall be filed on the fourth Monday in December in each year, and the delinquent list for the quarter commencing October first and ending December thirty-first, shall be filed on the fourth Monday in March in each year.

State v. Eureka Con., 8 Nev. 15.

Assessor May Force Collections by Sale--Fees of Assessor--May Give Absolute Title.

1160. SEC. 88. At any time while the assessment roll of any quarter is in the hands of the Assessor for collection, the Assessor may seize upon the personal property, or so much thereof as may be sufficient to satisfy the taxes and costs of any person, firm, corporation, association or company, who shall neglect or refuse to pay such taxes for one week after such demand of the Assessor or his deputy; and shall post a notice of such seizure, with a description of the property and the time and place whereon it will be sold, in three public places in the township or precinct where it is seized, and shall, at the expiration of five days, proceed to sell, at public auction, at the time and place mentioned in the notice, to the highest bidder, for cash, a sufficient quantity of such property to pay the taxes and costs incurred. And for this service the Assessor shall be allowed, from the party neglecting or refusing as aforesaid, a fee of three dollars and the same mileage a Sheriff would be entitled to receive for traveling to the place to make a levy; and, upon payment of the purchase money, he shall deliver to the purchaser the property sold, together with a certificate of sale, and the amount of the taxes or assessment and expenses thereon, for which the property was sold, whereupon the title to the property so sold shall vest absolutely in the purchaser.

Assessor to Credit Taxes Paid.

1161. SEC. 89. Whenever any tax is paid to the Assessor on the assessment of the proceeds of the mines, he shall mark the word "paid" opposite the name

of the person, firm, corporation, association or company paying such tax, and shall give a receipt therefor, specifying the number of tons, and the value thereof, assessed to such person, firm, corporation, association or company, for the quarter for which such assessment roll was made out, with the amount of tax assessed thereon.

Assessor to Attend at Office of Auditor.

1162. SEC. 90. On the fourth Mondays in March, June, September, and December, in each year, the Assessor shall attend at the office of the County Auditor with the assessment of the proceeds of the mines for the quarter preceding respectively, and the Auditor shall then and there administer an oath to the Assessor, which shall be written and subscribed on his assessment roll, to the effect that each person, firm, corporation, association or company, and all proceeds of the mines assessed in said roll on which the taxes have been paid has the word "paid" marked opposite the name of such person, firm, corporation, association or company; and the Auditor shall then foot up the amount of taxes remaining unpaid, and credit the Assessor with the amount, and shall then make a final settlement with the Assessor for all taxes charged against him on account of said assessment roll.

Assessor to Pay Over.

1163. SEC. 91. On Monday of each week, while the assessment roll shall be in the hands of the Assessor for collection, he shall pay over to the County Treasurer all money coming into his hands from taxes on said assessment roll, taking duplicate receipts therefor, one of which he shall file with the County Auditor, who shall credit him and charge the County Treasurer therewith.

Penalty for Failure in Duty.

1164. SEC. 92. If any Assessor shall refuse, for the period of five days, to make the payments and settlements with the Treasurer and Auditor of his county, as in this Act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment roll for that quarter, and the District or Prosecuting Attorney, of his own volition, or on being instructed to do so by the State Controller, or the Board of County Commissioners of the county, shall cause suit to be brought against such Assessor and his sureties for the full amount due on the Auditor's books, on account of such quarterly assessment; and if such suit is brought, no credit or allowance whatever shall be made to such refusing or neglecting Assessor for the delinquent taxes outstanding.

Additional Bond, When.

1165. SEC. 93. The Board of County Commissioners of each county shall exact an additional bond from the Assessor in such penal sum (not to exceed twenty thousand dollars) as the said board shall believe to be necessary to insure the prompt and faithful payment to the County Treasurer of all moneys received by such Assessor for taxes on the proceeds of the mines.

Duties of Auditor and District Attorney.

1166. SEC. 94. The Auditor shall, within three days after receiving the delinquent list on the assessment of the proceeds of the mines for any quarter year, deliver the same to the District or Prosecuting Attorney. The District or Prosecuting Attorney shall be held responsible on his official bond, given for the faithful performance of his duties in collecting state and county taxes, for any wrongdoing in collecting the taxes on the proceeds of the mines.

District Attorneys to Begin Suits, When and Where—Damage Penalties.

1167. SEC. 95. The District or Prosecuting Attorneys of the several counties of this state are hereby authorized and directed, immediately on receiving the delinquent list from the Auditor, as provided in the preceding section, to commence action in the name of the State of Nevada against the person, firm,

corporation, company or association so delinquent, and against the mines or mining claims from which the gold and silver-bearing ores, quartz or minerals, or other taxable products were extracted and assessed, so delinquent. Such action may be commenced in the county where such assessment is made, before any Justice of the Peace or court in said county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes sued for, not regarding the location of the mine or mining claim as to township, nor the residence of the person, firm, corporation, company or association, as to town, township, county or state. Ten per cent additional, by way of penalty, shall be collected on all delinquent taxes.

TEN PER CENT PENALTY. In construing the various sections of the revenue law relating to the collection of delinquent taxes: *Held*, that the per centum penalty does not apply to suits brought for the collection of delinquent taxes on the proceeds of mines. *State v. Cal. M. Co.*, 13 Nev. 203; *State v. Con. V. M. Co.*, 13 Nev. 228.

Form of Complaint.

1168. SEC. 96. The complaint in said action may be as follows:

State of Nevada, County of ----- [Title of Court.]

The State of Nevada v. A. B. & Co., the possessory claim to the mine or mining claim (describing it). The State of Nevada, by C. D., District or Prosecuting Attorney of the county of -----, complains of A. B., and also the following mine or mining claim (describing the mine or mining claim with the same particularity as in actions of ejectment), and for cause of action says: That between the first Monday in ----- (here insert the time in which the Assessor is directed to make the assessment for the quarter for which the taxes are delinquent), in the county of -----, in the State of Nevada, E. F., then and there being County Assessor of said county, did duly assess and set down on an assessment roll for the quarter year commencing the first day of -----, and ending the ----- day of -----, ----- tons of gold and silver-bearing ore, quartz or mineral, or other taxable product, extracted from the mine or mining claim designated and described in this complaint; said ore, quartz or mineral was assessed at ---- dollars per ton, from the sworn (or affirmed) statement furnished by -----, his (or their, as the case may be) agent (or Superintendent), to the Assessor (or, in case no statement was furnished the Assessor, then the assessed value may be stated from the best source of information within the Assessor's reach); that said A. B. was then and there the owner of said possessory mine or mining claim, and did extract therefrom the gold and silver-bearing ore, quartz or mineral, or other taxable product, assessed, and upon which the taxes are now delinquent and unpaid; and that said ore, quartz or mineral, or other taxable product, was duly assessed to him, and upon it there has been duly levied, by the operation of the law taxing the proceeds of the mines, for the quarter commencing the first day of -----, in the year of our Lord one thousand eight hundred and -----, a state tax of ----- dollars, and a county tax of ----- dollars, amounting in the whole to ----- dollars, all of which was duly assessed and levied against the proceeds of the mines or mining claim as aforesaid. Wherefore, plaintiff prays judgment against said A. B. for the sum of ---- dollars, and a separate judgment against said possessory mine or mining claim for the sum of ----- dollars, the whole of said tax on the proceeds of the possessory mine or mining claim herein described, per quarter year delinquent, and for ten per cent damages for non-payment thereof, as required by law, and for such further judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and the commencement of this action.

C. D., District or Prosecuting Attorney, County of -----

What May Be Set Up in Answer.

1169. SEC. 97. So far as they are applicable, and not otherwise expressly provided in this Act, the answer to the complaint as provided in the preceding section, the means and manner of serving the papers, fees of the District or Prose-

cuting Attorney, and officers serving papers, and in all other matters concerning the collection of delinquent taxes on the proceeds of the mines, the laws for the collection of taxes on real estate and personal property, as provided in this Act, shall apply.

Controller to Furnish Blanks.

1170. SEC. 98. The State Controller is hereby required to prepare and furnish the necessary blanks and instructions for the statements required to be furnished his office.

POLL TAXES.

Who Shall Pay Poll Tax.

1171. SEC. 99. Each male resident of this state, over twenty-one and under sixty years of age (uncivilized American Indians excepted), and not by law exempt, shall pay an annual poll tax, for the use of the state and county, of three dollars; and for the purposes of this Act, any person shall be deemed to be a resident of this state, who shall reside in this state, or who shall be employed therein upon any public or private works, for a period exceeding ten days.

Official Duties as to Poll Tax Receipts.

1172. SEC. 100. The State Controller shall, before the first Monday in March in each year, cause proper blank receipts for poll taxes to be printed by the State Printer, of uniform appearance, changing the style thereof each year; and said Controller, after signing and numbering them, shall cause a number thereof, equal to the probable number of inhabitants in each county, liable to pay a poll tax, to be immediately forwarded to the County Treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and thereupon deliver them to the Auditor, who shall likewise sign them and make an entry of the number received, in a book to be kept by him for that purpose.

Receipts, How Issued.

1173. SEC. 101. The Auditor shall, from time to time, issue to the Assessor (who shall be ex officio Poll Tax Collector) so many of the receipts for poll taxes as he may need, taking his receipt therefor and charging him therewith.

Penalties Imposed on Assessors, When.

1174. SEC. 102. No receipt for poll tax, other than that mentioned in section one hundred of this Act, shall be used or given for the payment of such tax; and any Assessor who shall receive any poll tax without delivering the proper receipt required by law, shall be guilty of a misdemeanor, for each poll tax so received, and on conviction thereof, shall be punished by imprisonment in the county jail for not less than three months, nor more than one year, or by a fine of not less than one hundred dollars, nor more than one thousand dollars for each offense, or by both such fine and imprisonment.

Bond of Poll Tax Collector.

1175. SEC. 103. Upon receiving such receipts from the Auditor, the Assessor shall give a receipt to said Auditor for the same, and the said Auditor shall immediately charge the same to the Assessor so receiving them. The Board of County Commissioners in each county shall exact (if they deem advisable) an additional bond from the Assessor as ex officio Poll Tax Collector, with additional sureties in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the County Treasurer of all moneys received by such Assessor for poll taxes.

Receipt Evidence of Payment.

1176. SEC. 104. No person shall be deemed or held to have paid his poll tax unless he be able to exhibit a receipt therefor, issued from the office of the State Controller, or otherwise prove the payment of the same; and no receipt shall be valid for any year unless issued after the first Monday in January of such year.

corporation, company or association so delinquent, and against the mines or mining claims from which the gold and silver-bearing ores, quartz or minerals, or other taxable products were extracted and assessed, so delinquent. Such action may be commenced in the county where such assessment is made, before any Justice of the Peace or court in said county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent taxes sued for, not regarding the location of the mine or mining claim as to township, nor the residence of the person, firm, corporation, company or association, as to town, township, county or state. Ten per cent additional, by way of penalty, shall be collected on all delinquent taxes.

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C. D., District or Prosecuting Attorney, County of -----

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1169. SEC. 97. So far as they are applicable, and not otherwise expressly provided in this Act, the answer to the complaint as provided in the preceding section, the means and manner of serving the papers, fees of the District or Prose-

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1173. SEC. 101. The Auditor shall, from time to time, issue to the Assessor (who shall be ex officio Poll Tax Collector) so many of the receipts for poll taxes as he may need, taking his receipt therefor and charging him therewith.

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1174. SEC. 102. No receipt for poll tax, other than that mentioned in section one hundred of this Act, shall be used or given for the payment of such tax; and any Assessor who shall receive any poll tax without delivering the proper receipt required by law, shall be guilty of a misdemeanor, for each poll tax so received, and on conviction thereof, shall be punished by imprisonment in the county jail for not less than three months, nor more than one year, or by a fine of not less than one hundred dollars, nor more than one thousand dollars for each offense, or by both such fine and imprisonment.

Bond of Poll Tax Collector.

1175. SEC. 103. Upon receiving such receipts from the Auditor, the Assessor shall give a receipt to said Auditor for the same, and the said Auditor shall immediately charge the same to the Assessor so receiving them. The Board of County Commissioners in each county shall exact (if they deem advisable) an additional bond from the Assessor as ex officio Poll Tax Collector, with additional sureties in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the County Treasurer of all moneys received by such Assessor for poll taxes.

Receipt Evidence of Payment.

1176. SEC. 104. No person shall be deemed or held to have paid his poll tax unless he be able to exhibit a receipt therefor, issued from the office of the State Controller, or otherwise prove the payment of the same; and no receipt shall be valid for any year unless issued after the first Monday in January of such year.

Penalties for Fraudulent Issue of Receipt.

1177. SEC. 105. Any person or persons who shall pass, sell or transfer, or attempt to pass, sell or transfer, or who shall forge or fraudulently issue any receipt or receipts for poll tax, contrary to the spirit or intention of this Act, shall be guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the state prison for not less than one year nor more than two years.

Summary Collection of Poll Tax—Wages May Be Garnisheed—Employers May Be Held Responsible, When—Liability of Assessor.

1178. SEC. 106. To enforce the collection of poll taxes, as provided in this Act, the Assessor may seize so much of any and every species of personal property whatsoever, claimed by any person liable to, and refusing or neglecting to pay his poll tax, or property in the possession of, or due from any other person, and belonging to such person so refusing or neglecting to pay such poll tax, as will be sufficient to pay the same and costs of seizure, which costs shall not exceed three dollars, and shall sell the same at any time or place, giving verbal notice of one hour previous to such sale; and any person indebted to another, liable to pay a poll tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person, after service upon him by the Assessor, of a notice in writing, stating the name or names of the person or persons so liable and owing a poll tax, and such debtor may, upon paying the same, deduct the amount thereof; and any person or persons, company or corporation, doing business within this state, and having by direct contract, or indirectly through other contractors, in their employ one or more persons liable to and owing a poll tax in this state, shall be liable for any and all poll taxes that may be due from such employees, and may deduct the amount from any sums due, or that afterwards may become due to such employees, whether such wages are payable directly to such employees or to other persons who furnish such employees under contract to such person or persons, company or corporation; and the Assessors of the respective counties are authorized, and it is hereby made their duty, to seize so much of any and every kind of personal property whatsoever, claimed by such person or persons, company or corporation, refusing or neglecting to pay the poll tax of all persons in their employ in this state, as will be sufficient to pay the same and costs of seizure, and shall sell the property thus seized at any time and place, by giving notice to the claimant of at least one day of the time and place of sale; *provided*, that the Assessor shall first require of the person or persons, or his or their agents, or, if a company or corporation, the President, Secretary, Superintendent, agent, manager, or whomsoever may be in charge of any works within this state, belonging to or under the control of such company or corporation, a statement, under oath, of the number of persons employed by them; and should any person thus required refuse or neglect to make such statement, as herein provided, it shall be the duty of the Assessor to make an estimate of the number of persons in the employ of such person or persons, company or corporation, as he may deem just and reasonable, and the assessment thus made shall be as valid as though made and verified as herein specified; *and, provided further*, the County Commissioners may, in their discretion, require the Assessor to demand the statement and make the assessment, as provided in this section of this Act, at different times, and at any time between the first Monday in January and the first Monday of December in each year; and if any person or persons, company or corporation, should have any persons in their employ not previously assessed, they shall make and furnish to the Assessor a statement of the number of such unassessed persons in their employ, and shall thereupon be required to pay their poll tax, as provided for in this section of this Act; *and, provided further*, that it shall be lawful for the Assessor, if any person, or any company or corporation, through its proper officer, desire it, or if he fail to collect at the time of making the assessment of real and personal property, to enter upon the statement required by section eight of this Act, in cases where real estate is assessed, the number

and amount of poll taxes due from such person, company, or corporation, *deliver receipts therefor*, and mark upon the stub "Statement of (name)." Such poll taxes shall be entered in a separate column upon the assessment roll, and a lien shall attach to both the real and personal property of the person or persons, company or corporation, charged therewith. The poll taxes so charged shall be collected with the other taxes assessed, and should they become delinquent they shall be subject to the ten per centum penalty provided in section forty-two of this Act, and shall be collected with the real and personal property taxes. The Assessor and his sureties shall be liable for all taxes not collected by him nor entered upon the assessment roll.

Sale of Property by Assessor.

1179. SEC. 107. The Assessor, after having deducted the poll tax for which property was sold (as provided for in the preceding section), and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the property. A delivery of the possession of the property by the Assessor or his deputy, to any purchaser, at any such sale, shall be sufficient title in the purchaser, without execution of a certificate of purchase thereof by the Assessor.

Refusing Information a Misdemeanor—Penalty.

1180. SEC. 108. If any person shall give the Assessor or his deputy a false name, or shall refuse to give his name, or if any person having men in his employ shall refuse to furnish the Assessor or his deputy, when requested, the name and residence of each man employed by him, if known, or if such person shall refuse to grant free access to the Assessor or his deputy to the building or place where such men are employed, he shall be guilty of a misdemeanor, and shall be arrested on complaint of the Assessor or his deputy, and, upon conviction before a Justice of the Peace, he shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment for a term of not less than two days nor more than three months, or by both fine and imprisonment.

Poll Tax Distributed.

1181. SEC. 109. Of the moneys collected as poll tax under the provisions of this Act, fifty per cent shall be paid into the county treasury for county purposes and the remaining fifty per cent shall be paid in for state purposes.

People v. Com. Washoe Co., 1 Nev. 460; State v. Donnelly, 20 Nev. 214; State v. Boyd, 19 Nev. 356.

Assessor to Pay Over.

1182. SEC. 110. On the first Monday in each month, the Assessor shall pay over to the County Treasurer all moneys in his hands collected as poll taxes, and take duplicate receipts therefor; and he shall, on the same day, repair to the office of the County Auditor and make oath before the Auditor of the total number of poll taxes collected by him during the last preceding month, and file, with the Auditor, the County Treasurer's receipt for the total amount of poll taxes collected; and the Auditor shall charge the Treasurer with said amount.

Assessor to Return Receipts.

1183. SEC. 111. On the first Monday in December, in each year, the Assessor shall return to the County Auditor all poll tax receipts received by him and not used, and shall pay to the County Treasurer the total amount collected, and not paid heretofore; and on the same day the County Treasurer shall attend with the Assessor at the office of the County Auditor, and the County Auditor shall, then and there, finally settle with the Assessor for all poll tax receipts signed by the Treasurer and delivered to him.

Poll Tax Roll.

1184. SEC. 112. It shall be the duty of the Assessor to keep a roll of the names of all persons who shall pay a poll tax in each year, and the date and amount of each payment; also, in a separate column of said roll, the names of

all persons liable to such tax, from whom he has demanded such tax, who have refused or neglected to pay the same, with the date of such demand. This return shall be certified by him as a true and full return of all persons from whom he has made such collection, or on whom he has made demand, and shall be verified by his oath or affirmation.

Auditor to Transmit Statement to Controller.

1185. SEC. 113. On the second Monday in December it shall be the duty of the County Auditor, and he is hereby required, to forthwith transmit to the Controller of State a certified statement of the number of poll taxes received by him from the County Treasurer, the number of such receipts issued by him to the Assessor, the number of such receipts returned to him by the Assessor, the amount of money paid over by the Assessor to the County Treasurer on poll tax collections, the amount collected by the Tax Receiver, and the amount delinquent, and the number of such receipts then transmitted to the Controller of State.

Penalty for Neglect.

1186. SEC. 114. Any Assessor who shall neglect to make the returns required by this Act shall forfeit and pay the sum of two hundred dollars to the use of the county, which may be recovered by suit on his official bond against the sureties, and the same shall work a forfeiture of his office.

LICENSE TAXES.

For law governing counties polling between 200 and 250 votes, see Stats. 1899, 59.

License, Amount Of.

1187. SEC. 115. The Sheriff in the several counties of this state shall be ex officio Collector of Licenses, as provided in this Act. There shall be levied and collected the following licenses:

First—From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table, five (\$5) dollars per quarter year; for a nine or ten-pin or bowling alley, ten (\$10) dollars per quarter year, license to be granted for a term of not less than three months.

Second—From the manager, lessee or owner of any theater, five (\$5) dollars per day, if granted for a term less than one month; if granted for one month, twenty (\$20) dollars shall be paid; if granted for three months, forty (\$40) dollars shall be paid; if granted for one year, seventy-five (\$75) dollars shall be paid; and for each exhibition of serenaders, opera or concert singers, the same payment for license as is required for theatrical performances; for each exhibition of circus, caravan or menagerie, or any collection of animals for public amusement, twenty (\$20) dollars for each exhibition; and for each show of any figures, and for each exhibition of wire-dancers or slight-of-hand performances, or other exhibitions or performances, for hire, not herein enumerated, ten (\$10) dollars per day.

Third—For each pawnbroker, one hundred (\$100) dollars per quarter year.

Fourth—For each keeper of an intelligence office, fifteen (\$15) dollars per quarter year. All such licenses shall be paid for in advance.

Bankers Defined.

1188. SEC. 116. License shall be obtained by any person or persons, private association or corporation, doing business in this state, engaged in one or more of the following occupations, to wit: In buying foreign or inland bills of exchange, or sight checks, or drafts, or in loaning money at interest, or in buying or selling notes, bonds or other evidences of indebtedness of private persons, or state, county or city stocks or indebtedness; or stock of incorporated or unincorporated companies, or person or persons, or in buying or selling gold dust, gold or silver bullion, gold or silver coin, or engaged as keeper of savings banks, or engaged in receiving general or special deposits of gold dust, gold or silver coin, or bullion, for profit. All such persons, companies and corporations are hereby declared to

be bankers within the meaning of this Act; *provided*, that checks used in the transaction of business, which are drawn and payable within this state, shall not be included as being liable to the provisions of this Act in regard to licenses. Licenses shall also be obtained by any person or persons, private associations or corporations, doing business in this state, and engaged in transmitting gold dust, gold or silver coin or bullion from any place in this state to any place without this state, or from one place to another place within this state, for profit, and the same shall be taken to be a common carrier, within the meaning of this Act.

Brokers Defined—Licenses Classified.

1189. SEC. 117. Brokers, or such persons, associations or corporations as are engaged in one or more of the following occupations, to wit: In loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or in buying and selling United States government, state, county or city stocks, or other evidence of United States government, state, county or city indebtedness, or stocks, notes, bonds or other evidence of indebtedness of incorporated companies, or in buying and selling gold dust, gold or silver bullion, or gold or silver coin, or in receiving general or special deposits of gold dust, gold or silver bullion, or gold or silver coin, for profit, or in keeping or conducting savings banks, shall be divided into five classes, as follows:

Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter year and over, shall constitute the first class.

Those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter year, shall constitute the second class.

Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter year, shall constitute the third class.

Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter year, shall constitute the fourth class.

Those doing business in any amount under fifty thousand dollars per quarter year, shall constitute the fifth class.

The license shall be given for the first class upon the payment of one hundred dollars per quarter year.

For the second class, eighty dollars per quarter year.

For the third class, fifty dollars per quarter year.

For the fourth class, thirty dollars per quarter year.

For the fifth class, twenty dollars per quarter year.

And a separate license shall be obtained for each establishment or separate house of such business located in the same county.

Bankers Classified—Amount of License—Common Carriers Liable.

1190. SEC. 118. Bankers, as defined in section one hundred and sixteen of this Act, shall be divided into seven classes, as follows: Those doing business in the aggregate to the amount of five hundred thousand dollars or more, per month, shall constitute the first class.

Those doing business in the aggregate to the amount of three hundred thousand dollars, and less than five hundred thousand dollars, per month, shall constitute the second class.

Those doing business to the amount of two hundred thousand dollars, and less than three hundred thousand dollars, per month, shall constitute the third class.

Those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars, per month, shall constitute the fourth class.

Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars, per month, shall constitute the fifth class.

Those doing business to the amount of twenty-five thousand dollars, and less than fifty thousand dollars, per month, shall constitute the sixth class.

Those doing business in any amount less than twenty-five thousand dollars per month shall constitute the seventh class.

The license for the first class shall be given upon the payment of two hundred dollars per month.

For the second class, upon the payment of one hundred and fifty dollars per month.

For the third class, upon the payment of one hundred dollars per month.

For the fourth class, upon the payment of seventy-five dollars per month.

For the fifth class, upon the payment of fifty dollars per month.

For the sixth class, upon the payment of twenty-five dollars per month.

And for the seventh class, upon the payment of twelve dollars per month; and a separate license shall be obtained for each establishment or separate house of such business, located in the same county.

Common carriers, as defined in section one hundred and sixteen of this Act, shall be liable to an annual license of one hundred and fifty dollars, payable quarterly; *provided*, that but one license shall be required from the same person, company or corporation in the same county.

Merchants Liable for License.

1191. SEC. 119. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or distilled liquors, except the wines and distilled liquors produced or manufactured from the agricultural products of this state, when sold by the producer or manufacturer thereof, and except such as are sold by auctioneers under license according to law, shall pay quarterly an amount of money for license, as required by the class in which such person is placed by the Sheriff of the county, under the provisions of the succeeding section; *provided, always*, that nothing herein shall be construed to extend to physicians, surgeons, apothecaries, or chemists, as to any wines or spirituous liquors which they may use in the preparation or compounding of medicines.

Merchants Liable—License Classified—Amount of License.

1192. SEC. 120. Every person who shall sell or vend any goods, wares or merchandise, or wines, or distilled liquors, drugs or medicines, jewelry, wares of precious metals, and persons who keep horses or carriages for rent or hire, except mules, horses, or animals used in the transportation of goods, shall obtain from the Sheriff of the county in which such business may be transacted, for each of the branches of business, in this and the preceding sections enumerated, a license for the transaction of such business, at the following rates, to wit: All persons dealing as aforesaid, shall be classed according to the amount of the average monthly sales effected, in the following manner, that is to say:

Those who are estimated to make average monthly sales to the amount of one hundred thousand dollars or more, shall be constituted the first class.

Of seventy-five thousand dollars, and less than one hundred thousand dollars, shall constitute the second class.

Of fifty thousand dollars, and less than seventy-five thousand dollars, shall constitute the third class.

Of forty thousand dollars, and less than fifty thousand dollars, shall constitute the fourth class.

Of thirty thousand dollars, and less than forty thousand dollars, shall constitute the fifth class.

Of twenty thousand dollars, and less than thirty thousand dollars, shall constitute the sixth class.

Of ten thousand dollars, and less than twenty thousand dollars, shall constitute the seventh class.

Of five thousand dollars, and less than ten thousand dollars, shall constitute the eighth class.

Of one thousand dollars, and less than five thousand dollars, shall constitute the ninth class.

Of all amounts under one thousand dollars, the tenth class.

The license for the first class shall be given upon the payment of fifty dollars per month.

For the second class, thirty-seven dollars and fifty cents per month.

For the third class, twenty-five dollars per month.

For the fourth class, twenty dollars per month.

For the fifth class, fifteen dollars per month.

For the sixth class, ten dollars per month.

For the seventh class, seven dollars and fifty cents per month.

For the eighth class, five dollars per month.

For the ninth class, three dollars and seventy-five cents per month.

For the tenth class, two dollars and fifty cents per month; *provided*, that the sale of liquors and wines, by persons licensed under this section shall not be in less quantities than one quart measure.

Liquor Dealers Liable—License Payers Classified.

1193. SEC. 121. Any person or persons who may dispose of any spirituous, malt or fermented liquors or wines, in less quantities than one quart, shall, before the transaction of any such business, take out a license from the Sheriff of the county in which he or she proposes to do such business, and pay therefor the sum of ten dollars per month; *provided*, that all persons engaged in retailing liquors as aforesaid, in connection with entertainment for travelers, at any point distant one mile or more outside the limits of any city or town in this state, shall pay a quarterly license of fifteen dollars; and *provided*, further, that no such person or persons shall be entitled, under and by virtue of said license, to sell or cause to be sold within this state, any such spirituous, malt or fermented liquors, or wines, on any day upon which any general election is held, or within the limits of any county or city on any day upon which any special or municipal election is held therein, but it shall be expressed in each and every license so granted, that the person or persons to whom the same is granted, shall and will not sell or cause to be sold, any such liquors or wines on such day or days.

Hotels Classified.

1194. SEC. 122. All tavern, hotel, or inn-keepers, all restaurants, public boarding houses, or eating stands, and all public lodging houses, shall be divided into three classes, as follows:

Those doing business in the aggregate to the amount of three thousand dollars, or over, per month, shall constitute the first class.

Those doing business to the amount of one thousand dollars, and less than three thousand dollars, per month, shall constitute the second class.

Those doing business to the amount of less than one thousand dollars per month, shall constitute the third class.

The license for the first class shall be given upon the payment of forty-five dollars per quarter.

For the second class upon the payment of fifteen dollars per quarter.

And for the third class upon the payment of seven dollars and fifty cents per quarter; *provided*, that nothing in this section shall require the payment of any license for lodging houses that are kept in connection with eating houses, where the aggregate receipts of such lodging department does not exceed thirty dollars per month.

Nothing in this section shall be so construed as to include the right to sell spirituous or malt liquors and wines, but the same shall be distinct and separate business therefrom, and require separate and exclusive license therefor. Any house keeping two or more boarders shall be deemed a public boarding house.

License to Peddle—Sheriff to Issue License.

1195. SEC. 123. Every traveling merchant, hawker, or peddler who shall carry a pack or vend goods, wares, or merchandise of any kind, and every auc-

tioneer, shall pay for such license the sum of ten dollars per month; and every traveling merchant, hawker, or peddler, who shall use a wagon, or one or more animals, for the purpose of vending any goods, wares, or merchandise of any kind, or wines, fermented or spirituous liquors, shall pay for such license twenty-five dollars per month; *provided*, that nothing in this section be so construed as to apply to the sale of fruits or (the) agricultural products of this state or the State of Utah. The County Auditor shall issue to the Sheriff of the several counties the licenses contemplated in this section, which license so issued shall authorize the holders of the same to vend goods, wares, and merchandise as set forth in said license within the county wherein such licenses are obtained; and it is hereby made the duty of every Justice of the Peace, Constable, Sheriff, and all peace officers, to demand the license of any such peddler, hawker, or other person named herein, and if such person be found not to have a license, as directed by law, the person so offering any goods, wares or merchandise for sale, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than fifty, nor more than five hundred dollars. *As amended, Stats. 1897, 31.*

1. POWER OF STATE TAXATION. The power to tax all the property and business within the state is an essential attribute of its sovereignty; there is no restraint upon its exercise, when within constitutional limits, except the responsibility of the members of the legislature to their constituents. *Ex Parte Robinson, 12 Nev. 263.*

SECTION 1, ARTICLE 10, OF THE CONSTITUTION CONSTRUED. In construing section 1 of article 10 of the state constitution: *Held*, that it refers particularly to the levy of *ad valorem* taxes on all property, real and personal, and does not apply to licenses imposed for conducting any business or profession. *Id.*

2. TRAVELING MERCHANT REQUIRED TO PAY A LICENSE AS A MERCHANT. Petitioner kept a stock of goods in San Francisco, California, and comes to Virginia City, Nevada, for the purpose of soliciting orders for goods: *Held*, that the City of Virginia was authorized to impose and collect a license tax from him as a merchant. *Ex Parte Siebenhauer, 14 Nev. 365.*

3. CITY AND COUNTY LICENSE MAY BE REQUIRED FOR THE SAME BUSINESS. *Id.*

MEANING OF WORD "SOLICITOR." *Id.*

4. TRAVELING MERCHANT—FAILURE TO PROCURE LICENSE—PENALTY—OBJECT OF LICENSE LAW. *Mandlebaum v. Gregovich, 17 Nev. 88.*

Houses of Amusement Licensed.

1196. SEC. 124. Any person or persons who may conduct any hurdy-gurdy house, dance house or concert saloon in this state, where women or girls are employed to dance, or to solicit the purchase by the persons visiting such house, either directly or indirectly, of any kind of liquor, or wine or cigars, or to solicit such persons so visiting to treat to any kind of liquor, wine or cigars, shall, before entering upon the conducting of such dance house, or hurdy-gurdy house, or concert saloon, take out a license, in addition to the retail liquor license, from the Sheriff of the county in which such person or persons propose to carry on such business, and pay therefor the sum of five hundred dollars for each and every three months.

Duties of Sheriffs—When License to Be Procured—Infraction of Law a Misdemeanor—Penalty—Defendant May Plead What.

1197. SEC. 125. Each Sheriff, as Collector of Licenses, shall make diligent inquiry and examination as to all persons in his county liable to pay for licenses, as provided in this Act, and he is hereby empowered, and it shall be his duty, to require each person to make a statement, under oath or affirmation, of the amount of business which he or the firm of which he is a member, or for which he is agent or attorney, or the association or corporation of which he is President, Secretary or Managing Agent, have done during the last preceding month or quarter, as the case may be, in order to carry out the provisions of this Act. Thereupon, such person, agent, attorney, Secretary, President or Managing Agent

shall procure a license from said Sheriff, of the class of which such party is liable to pay for, and in all cases where an underestimate is made by the party applying, the party making such underestimate shall be required to pay a double license for the next month, or quarter, as the case may be. License shall be procured immediately before the commencement of any business or occupation subjected to license tax under the provisions of this Act. Such license shall authorize the party obtaining the same, within his town, city or particular locality in the county, to transact business as specified in such license; *provided*, that nothing in this Act, nor in any license issued under it, shall be construed as authorizing any person to carry on any business within the limits of any incorporated city or town, authorized by its charter to impose city or town license, unless such person shall, in addition to the license required by this Act, procure the license required by the ordinances, resolutions or orders of such city or town; *and, provided further*, that any person or persons, who shall commence or continue to carry on or transact any business, trade, profession or calling, for the transaction of or carrying on of which a license is required by this Act, without procuring such license, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; *and, provided further*, that if any person or persons, required by the provisions of this Act to take out a license, shall fail, neglect or refuse to take out such license in the manner provided in this Act, or shall carry on, or attempt to carry on business without such license, the Collector of Licenses may direct suit, in the name of the State of Nevada, as plaintiff, to be brought against him or them for the recovery of the license money; and in such case, either the Sheriff or District Attorney may make the necessary affidavit, and a writ of attachment may issue, without undertaking being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the Collector of Licenses and ten dollars to the District or Prosecuting Attorney prosecuting the suit. Upon the trial of any criminal action, provided for by this section, the defendant shall be deemed not to have procured the proper license, unless he either produces it or proves that he did procure it; but he may plead in bar of the criminal action, a recovery and payment in a civil action against him, of proper license money, damages and costs.

Limit as to Time of License.

1198. SEC. 126. The licenses provided to be granted by the provisions of this Act, except theaters, menageries, or circus licenses, shall be granted for three, six or twelve months, at the option of the person applying for such licenses.

How Provided and Distributed.

1199. SEC. 127. The County Auditor shall cause to be printed a sufficient number of blank licenses mentioned in this Act, for the purposes herein mentioned. Each license shall also contain a blank receipt, to be signed by the Sheriff on the delivery of such license to the purchaser thereof. The County Auditor shall hand over to the Treasurer of the county a sufficient number of blanks for the use of the county, which shall be charged to the Treasurer on the Auditor's books. The Treasurer shall countersign the same and deliver them to the County Auditor, taking his receipt therefor.

Auditor to Furnish License—To Be Fully Made Out—Statement of Sheriff.

1200. SEC. 128. The County Auditor shall, from time to time, deliver to the Sheriff as many of such licenses as may be required, and shall sign the same and charge them to the Sheriff; *provided*, that before signing or delivering any license to the Sheriff, the Auditor shall fill out the license in full, stating therein to whom said license is issued, the kind of business authorized to be carried on under the license, the room, building and place where the business is to be carried on, the

dates when said license begins and expires, and the amount of money to be paid therefor, and shall, at the same time, make entries upon the stubs in the license book. Whenever any license is returned by the Sheriff unsold, the Auditor shall cancel and file the license, and note the fact and date of such return and cancellation upon the stub thereof. No Board of County Commissioners shall audit or allow any claim in favor of a Sheriff until there shall be filed with said board the certified statement of the Auditor that all settlements required by section one hundred and twenty-nine of this Act have been made by said Sheriff. The amount of all licenses issued to the Sheriff and not accounted for shall be deducted before any claim shall be allowed to a Sheriff.

Sheriff to Pay Over—Duties of Auditor—Liability of Sheriff.

1201. SEC. 129. On the second Monday in each month the Sheriff shall pay over to the Treasurer all moneys received by him from licenses, and take from the Treasurer duplicate receipts therefor; and he shall immediately on the same day return to the County Auditor all licenses not issued or disposed of by him, and the County Auditor shall credit him with the amount so returned; also, the receipts of money paid to the County Treasurer, which receipts shall be filed with the County Auditor. The County Auditor shall charge the Treasurer therefor, and open a new account with the Sheriff for the next month; and it is hereby made the duty of each Sheriff in his county to demand that all persons required to procure licenses in accordance with this Act, take out and pay for the same, and he shall be held liable on his official bond for all moneys due for such licenses remaining uncollected by reason of his negligence.

Real Property Liable for License, When—May Seize and Sell Certain Property.

1202. SEC. 130. For the purpose of collecting the revenues of the county and preventing the evasion of the license law, as provided in this Act, or as may be provided in any law hereafter enacted, all billiard tables, bar fixtures, and furniture belonging to or in use for the purpose of carrying on the business of any billiard, drinking saloon, restaurant, tavern, hotel, inn, public boarding house, chop house, or eating stand, are held liable for the amount due for the license tax assessed on the same; and it is hereby expressly provided, that upon failure of the parties keeping any such establishment, or exercising ownership therein, to pay the license on the same in the manner and form as provided by law, the Sheriff or properly authorized officer, whose duty it shall be to enforce the collection of any such license, may seize any such billiard table, bar fixtures, furniture or any other personal property, and shall proceed to sell in the same manner as provided in section one hundred and six of this Act, for the sale of personal property by the Assessor for the collection of poll taxes, such property or so much thereof as may be requisite for the payment of such license as may be due and owing on account of the same.

All License Tax to Go Into the County Treasury.

1203. SEC. 131. All moneys received from licenses under the provisions of this Act shall be paid into the county treasury and credited to the general county fund.

Possession of Bogus License a Felony.

1204. SEC. 132. If either the County Treasurer, County Auditor, Sheriff or any other person shall issue, have in his possession, with intent to circulate or put into circulation, any other licenses than those properly issued to the Sheriff under the provisions of this Act, the person so offending shall be guilty of felony, and, on conviction, be sentenced to imprisonment in the state prison for a term of not less than one year nor more than four years; and any collector who shall receive the money for a license without delivering to the person paying for the same the license paid for, or who shall insert the name of more than one person or firm therein, shall be guilty of a misdemeanor, and, on conviction thereof,

shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both such fine and imprisonment.

Fee of Sheriff.

1205. SEC. 133. The Sheriff, as ex officio License Collector, shall receive, and is hereby authorized to retain, as compensation for the collection of licenses, six per cent of the gross amount on each business license sold.

MISCELLANEOUS PROVISIONS.

Duty of Auditor and Treasurer to Make Statement.

1206. SEC. 134. The County Auditor and Treasurer of each county in the state shall, on the first Mondays of April, July, October and January, make a joint statement to the Board of County Commissioners, and forward a copy to the State Controller, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury; the funds among which the same was distributed and the amounts to each; the total amounts of warrants drawn and paid, and on what funds; the total amounts of warrants drawn and unpaid; the accounts or claims audited or allowed and unpaid, and the fund out of which they are to be paid, and, generally, make a full and specific showing of the financial condition of the county, which shall be published in some newspaper published in the county, if there be one; if not, then by posting the same in a conspicuous place on the courthouse of said county.

County Funds, How Kept.

1207. SEC. 135. Each County Treasurer shall keep all moneys received by virtue of his office in his own possession, or on special deposit when authorized by law, and no one except the Treasurer or his duly authorized deputy, shall receive or pay out any such moneys; and when any money shall be paid to the County Treasurer he shall give to the person paying the same, a receipt therefor; which receipt, such person shall forthwith deliver to the County Auditor, who shall charge the County Treasurer with the amount therein specified, and give to the person paying the same an acquittance.

Statement of Funds to Be Sent to Controller—Treasurer to Settle With Controller.

1208. SEC. 136. The County Auditors of the several counties shall, on the first Monday of each month, mail or express, prepaid, to the State Controller, a statement of all state moneys in the respective county treasuries and from what sources derived, and the Treasurers of the respective counties shall at all times hold themselves in readiness to settle and pay all moneys in their hands belonging to the state, whenever required so to do by order signed by the State Controller and State Treasurer, who are hereby authorized to draw such order whenever they deem it necessary. At the time the Treasurer of any county shall pay to the State Treasurer moneys required to be paid by order of the Treasurer and Controller, it shall be the duty of such County Treasurer to deliver to the Controller, a statement showing the amount so paid, and all sources from which received, and when received. The County Treasurer shall, on the second Monday of June and December of each year, settle in full with the State Controller, and send, in such manner as he shall designate, to the State Treasurer, all funds which shall have come into his hands as County Treasurer for the use and benefit of the state, taking therefor a receipt from the State Treasurer, which receipt he shall cause to be filed with the Controller. Before making payment, each County Treasurer shall transmit to the State Controller, by mail or otherwise, prepaid, a report from the County Auditor, together with a duplicate thereof, stating specially the total amount collected, and the amount due the state from each particular source of revenue, the original of which shall be filed with the Con-

troller, who shall enter upon the same, and also upon the duplicate, the cash paid to the State Treasurer and the amount of the expenses allowed; and the County Treasurer shall thereafter file the duplicate report with the Auditor of his county, whereupon the Auditor shall balance the Treasurer's account; and it shall be the duty of the Auditor to furnish the County Treasurer with the report which such Treasurer is required to produce in making his settlement with the state.

Vouchers for Claims—Treasurer to Pay Out Funds—Vouchers Must Be Sent to Controller.

1209. SEC. 137. Fully itemized vouchers shall be made, allowed and certified in duplicate by the Board of County Commissioners, for all claims for salaries and other expenses for which the state is wholly or in part liable, and the Clerk of the Board of County Commissioners shall certify such duplicate vouchers to the County Auditor, who shall indorse on each the amount due from the state and county respectively, which amount shall be in proportion to the taxes levied for state and county purposes, and shall furnish the County Treasurer one of the duplicates so indorsed. The County Treasurer shall pay out of the moneys belonging to the state and county the amounts indorsed upon such duplicate, upon warrants drawn by the County Auditor therefor, and shall cause the payee to receipt on said duplicate for the amount paid thereon for the state. The County Treasurer shall transmit these duplicate vouchers to the State Controller, for allowance in semi-annual settlement provided for in the last preceding section; and no County Treasurer shall be allowed to make any settlement with the State Controller, or be in any manner released, he or his bondsmen, from liability for the full amount by him received, unless he send to the State Controller the vouchers required by this section.

County Auditor Must Send Statement to Controller—What to Contain.

1210. SEC. 138. It is hereby made the duty of the several County Auditors of this state, on the second Monday of December of each year, to prepare and forward to the Controller of State a statement showing: First—The indebtedness of such county, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness, or any part thereof, and the amount of cash in the county treasury, in its several funds. Second—A careful estimate of the value of all property owned by such county. Third—The aggregate value of the real estate and personal property in such county, as shown by the last assessment roll, stating each separately. Fourth—The rate of taxation in said year in such county, and the amount of poll taxes collected, and the number of registered voters. Fifth—The amount of taxes so assessed, stating the portion, if any, there was delinquent.

Misappropriation of Public Funds—Penalty—Each Officer to Perform Single Duties.

1211. SEC. 139. If any officer shall, directly or indirectly, use, loan, employ, or in any manner place out of his possession, otherwise than as on special deposit, any funds belonging to or collected by and paid to him, for the use and benefit of either the state or of any county, he shall be guilty of a felony, and on conviction thereof shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the state prison for a term not exceeding five years, or by both such fine and imprisonment. The Treasurer, ex officio Tax Receiver, Sheriff, Assessor, Auditor, Clerk of the Board of Equalization, and each member of such board, shall each separately perform the duties required of him in his office, and shall not perform the duties of any two offices under this Act, except as provided in this Act or by law; and any officer who shall, at the same time, perform the duties of any two officers, in any manner connected with the public revenue, except as in the manner provided in this Act or expressly authorized by law, or any collecting or disbursing officer or Auditor who shall refuse or neglect the performance of the duties required by this Act, shall be guilty of a felony, and on conviction thereof shall

be punished by imprisonment in the state prison for a term of not more than one year, and by a fine of not less than two hundred nor more than one thousand dollars, and shall forthwith be removed from office.

Books Open to Inspection.

1212. SEC. 140. The books, papers, and accounts of each officer, in regard to the assessment or collection of taxes, or to the receiving, auditing, or disbursing moneys of the state, or of any county, shall at all times during office hours, when not necessarily in use by the officers, be open to any person whomsoever to inspect or copy, without any fee or charge.

Duties of Several County Officers—Penalty for Neglect—Temporary Officer to Give Bond.

1213. SEC. 141. Whenever any Assessor, Treasurer and ex officio Tax Receiver, Sheriff and ex officio License Collector, Auditor, or other officer, upon whom duties devolve under this Act, or under any other revenue Act of this state, shall willfully neglect to perform any such duties, or shall perform any in a careless or incompetent manner, he shall be deemed guilty of a misdemeanor, and shall be removed from office in the manner prescribed by law; and when an issue of facts shall be joined, under any presentment made or proceeding commenced to remove such officer from his office, the Board of County Commissioners (and in case such officer be a Commissioner, the District Judge) shall have power to suspend such officer from his powers and duties under this Act, or under any other revenue Act, and to appoint a competent person in his place, until the proper tribunal shall have either removed or acquitted such suspended officer; and any Act concerning the revenue or the assessment or collection of taxes and licenses, or sale of property for the non-payment of taxes, performed by any such temporary officer, shall be as valid, and of the same force and effect as if performed by the suspended officer; *provided, however*, that such appointee shall first qualify and give such bond, with sureties, for the faithful performance of the duties of such office, as may be required of persons elected thereto.

Officer to Make Settlements, When.

1214. SEC. 142. Each Assessor, Treasurer, ex officio Tax Receiver, Sheriff, ex officio License Collector and District or Prosecuting Attorney, shall, on the Saturday next preceding the first Monday in January in each year, attend at the office of the County Auditor, for the purpose of making a settlement with him, on account of all transactions connected with the revenue for the year ending on that day; and each and every such officer, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers and documents appertaining to his office and in his possession, taking a receipt therefor.

Affidavit of Mortgage—Taxes to Be Filed—Penalty for False Swearing—Duties of District Attorney.

1215. SEC. 143. Before satisfaction be entered upon any mortgage or lien, or any release of any mortgage or lien (other than mortgage given to secure the purchase money of the property mortgaged) be recorded, or filed for record, in the several County Recorders' offices of this state, the County Recorder shall be satisfied, by affidavit made and filed [by] the mortgagee, or person holding such mortgage or lien, or his or their agent or attorney, that all the taxes, for state and county purposes, payable on the money or debts secured by the mortgage or lien, have been paid. Such affidavit must be in writing, and may be taken before the County Recorder or any officer authorized to administer oaths. For filing such affidavit, the Recorder shall be allowed twenty-five cents, and the officer administering the oath shall be allowed twenty-five cents; and if any person shall knowingly swear falsely in making such affidavit, he shall be deemed guilty of perjury, and punished accordingly; and if any County Recorder shall enter, or permit to be entered, satisfaction of any mortgage or lien, without making an entry of, or filing such affidavit, he shall be liable, on his official bond, to pay to the state the sum of five hundred dollars, which may be

recovered by an action, which it shall be the duty of the District or Prosecuting Attorney to prosecute; and the District or Prosecuting Attorney shall have for such prosecution twenty-five per centum of the amount recovered, to be collected from the defendant.

Affidavit on Foreclosure of Mortgage or Lien.

1216. SEC. 144. Whenever any action shall be brought for the purpose of foreclosure of any mortgage or lien, a similar affidavit to that mentioned in the preceding section shall be attached to the complaint in such action; and in case the same shall not have been attached at the commencement of the action, the court in which the suit is pending, on motion of any defendant therein, shall make an order staying all proceedings in such action until such an affidavit shall have been filed, or proof made of the payment of such taxes; and it shall be the duty of the court, before entering a decree or judgment in any such case, to require such affidavit or proof.

Toll Roads to Report, How—Proceedings Against Toll Road.

1217. SEC. 145. All owners of toll roads or bridges in this state shall within ten days after the first Mondays in January, April, July and October, in person or by their agent or agents, make and file with the Treasurer of his or their county in which such toll road or bridge, or the toll house thereon is situate, an affidavit showing the gross amount of toll upon such road or bridge for the three months next preceding the first Mondays of the month in which such settlement is made, and at the same time pay to such Treasurer two per cent of such proceeds. And if any owner or owners of any toll road or bridge, shall, for the period of one month after the end of any quarter, as herein prescribed, fail to make such affidavit and payment, the franchise upon such road or bridge shall be forfeited, and the County Commissioners shall thereupon direct the District Attorney of the county to commence proceedings at once, by information, in the nature of quo warranto, to forfeit the franchise of the owner, or owners of such road or bridge thus in arrears, and to bring civil suit to collect of such owner or owners, the amount of such arrearage; and upon a recovery in such suit for collection, the court in which such suit is brought and tried, in addition to the costs of other officers, shall allow the District Attorney a fee for such prosecution, not to exceed (in the discretion of the court) fifty dollars, which shall be taxed against the defendant or defendants in such suit, and recovered, as other costs in the action.

Damages to Go to School Fund.

1218. SEC. 146. It shall be the duty of the several County Treasurers to pay to the Treasurer of this state, to the credit of the general school fund of the state, all amounts collected by them under the provisions of the preceding section, in the same manner and under the same regulations as other moneys due the state from counties are paid.

Toll Roads to Be Kept in Repair—Duties of District Attorney.

1219. SEC. 147. It shall be the duty of the County Commissioners of the several counties of this state to compel the owners of all toll roads and bridges in their respective counties to keep the same in good repair; and upon complaint of any person traveling such roads or crossing such bridges, it shall be the duty of the Commissioners to ascertain the truth of such complaint, and if true, to notify the owner or owners of such road or bridge, or their agent or agents in charge thereof, and if such road or bridge is not repaired within a reasonable time, to be prescribed by such Commissioners, then they shall direct the District Attorney of their county to commence proceedings to forfeit such franchise.

Fines to Go to School Fund.

1220. SEC. 148. The full amount of all fines imposed and collected under, and for a violation of any penal law of this state, shall be paid into the state

treasury to the credit of the state school fund, and costs shall in no case be deducted from the fine fixed by law, or imposed by the court.

What to Go to State.

1221. SEC. 149. All amounts collected for fees and licenses under special "Acts to regulate insurance business in the state," and the state's apportionment of the amounts collected under a special "Act to restrict gaming," shall be paid into the state treasury to the credit of the general fund.

County Commissioners Authorized to Levy Ad Valorem Tax.

1222. SEC. 150. The Board of County Commissioners in each county of this state are hereby authorized and empowered to levy annually, on or before the first Monday in March, an ad valorem tax for county purposes not exceeding the sum of two dollars on each one hundred dollars value of taxable property in the county and such special taxes as may be authorized and required by law; *provided*, the total tax levy in any one year for all purposes shall not exceed five dollars on each one hundred dollars value of taxable property in any county or part thereof; *provided*, no levy in excess of one dollar and fifty cents on each one hundred dollars value of taxable property therein shall be so levied in any county of this state for county purposes unless the county is indebted for liabilities contracted prior to January 1st next preceding the making thereof and not bonded or funded, when a levy for county purposes, within the limit first above prescribed, such as in the judgment of the County Commissioners will enable the county to discharge such indebtedness and meet the expenses of the current year, may be levied. *As amended, Stats. 1895, 22.*

For law governing counties polling between 434 and 444 votes and between 1,100 and 1,200 votes, see Stats. 1899, 33. For counties polling between 220 and 280 votes, see Stats. 1897, 35, and 1899, 39.

State v. Manhattan S. M. Co., 4 Nev. 318; People v. Com. of Washoe Co., 1 Nev. 460.

Amount and Purpose to Be Stated.

1223. SEC. 151. In making the annual levy the board shall designate the number of cents levied for each particular purpose, and shall add thereto the amount levied by law for state purposes. They shall cause said state and county levies to be entered on the records of their proceedings, and shall direct their Clerks to deliver a certified copy thereof to the Auditor, Assessor and Treasurer, each of whom shall file said copy in his office.

Redemption Fund.

1224. SEC. 152. The board shall apportion the revenue coming into the county treasury, under the provisions of the two preceding sections of this Act, into such funds as are now or may hereafter be provided by law; *provided*, that there shall be set aside such portion of all the moneys of the county, to create a redemption fund for the payment of outstanding indebtedness, as is provided by any law now in force, or which may hereafter be passed.

For apportionment of county revenues, see Secs. 2137-2139.

No Compensation.

1225. SEC. 153. For services rendered under the provisions of this Act, County Assessors, Auditors and Treasurers, except as specified in [this] the Act, shall receive no compensation to themselves other than the salaries fixed by law.

REPEALING CLAUSE.

All Following are Repealing Clauses.

1226. SEC. 154. An Act entitled "An Act to provide revenue for the support of the government of the State of Nevada," approved March 9, 1865 [p. 271], and all Acts amendatory thereof and supplementary thereto, passed and approved prior to the year 1891;

An Act entitled "An Act granting further powers to District or Prosecuting

Attorneys of the several counties, and attorneys of incorporated cities and towns, within this state, in suits for delinquent taxes, for the fiscal year one thousand eight hundred and sixty-four," approved February 18, 1865 [p. 163];

An Act entitled "An Act concerning the collection of taxes on personal property," approved February 17, 1866 [p. 69];

An Act entitled "An Act to provide for sales of property for delinquent taxes," approved March 1, 1866 [p. 161];

An Act entitled "An Act to legalize the publication of summons, in suits for the collection of delinquent taxes in the several counties of this state," approved March 12, 1867 [p. 111];

An Act entitled "An Act to enforce the payment of two per cent of the gross proceeds of all toll roads and bridges, as provided by law, to the general school fund of this state," approved March 13, 1867 [p. 120];

An Act entitled "An Act providing for the taxation of the net proceeds of mines," approved February 28, 1871 [p. 87], and all Acts amendatory thereof and supplementary thereto;

An Act entitled "An Act to require Assessors to pay over to the County Treasurer monthly all poll taxes collected," approved February 14, 1873 [p. 54];

An Act entitled "An Act to limit the compensation of County Auditors for extending taxes on the assessment roll," approved February 20, 1873 [p. 63];

An Act entitled "An Act to regulate the collection of taxes in disputed territory between counties," approved February 21, 1873 [p. 66];

An Act entitled "An Act to define the time for levying and assessing taxes for state and county purposes," approved February 25, 1873 [p. 96], and all Acts amendatory thereof and supplementary thereto;

An Act entitled "An Act prescribing an additional penalty for non-payment of taxes in certain cases after suit," approved March 7, 1873 [p. 169];

An Act entitled "An Act providing for the location and taxation of borax and soda mines and claims," approved March 7, 1873 [p. 187];

An Act entitled "An Act more fully defining the manner of collecting the taxes on movable personal property by the Assessor," approved February 18, 1875 [p. 70];

An Act entitled "An Act in relation to special taxes," approved March 4, 1879 [p. 63];

An Act entitled "An Act to provide for the taxation of mines that produce a ton or less of ore or mineral-bearing material per day, and to encourage the prospecting of undeveloped mines," approved March 1, 1883 [p. 81];

An Act entitled "An Act to provide for the publication of the names of taxpayers, and the total valuations upon which said taxpayers pay taxes, appearing in the assessment rolls in the respective counties of the State of Nevada," approved March 5, 1885 [p. 62];

An Act entitled "An Act fixing the rate of poll tax in the State of Nevada, and to repeal all other Acts relating thereto," approved February 23, 1887 [p. 78]; and all other Acts and parts of Acts passed and approved prior to the year 1891, so far as they conflict with the provisions of this Act, are hereby repealed.

An Act defining certain duties of County Assessors, County Commissioners, County Clerks, County Treasurer and ex officio Tax Receivers.

Approved February 27, 1893, 52.

SECTIONS 1, 2, 4, 7, 8 and 10 of this Act are repetitions of provisions in the preceding Act, and are consequently omitted.

Board of Equalization.

1227. SECTION 3. The Board of County Commissioners of each county in this state shall meet as a Board of Equalization on the third Monday of September in each year, to examine the assessment roll and equalize the assessment of prop-

erty appearing upon the assessment roll in their respective counties, and shall continue in session from time to time until the business of equalization is disposed of, but no later than the first Monday in October, and all the provisions of the statute as to notice and manner of equalization, shall be the same as now prescribed, except as to the dates of such meetings, which shall be as hereinbefore stated.

See Sec. 1098.

Duties of Auditor.

1228. SEC. 5. The County Auditor, as soon as the assessment roll is delivered to him by the Clerk of the Board of Equalization, shall proceed to add up the valuations, and to enter the total valuation of each kind of property, and the total valuation of all property on the assessment roll.

Auditor to Deliver Corrected Roll.

1229. SEC. 6. On or before the first Monday in November in each year, the Auditor shall deliver the corrected assessment roll, with his certificate attached thereto, together with the maps or plat books, to the ex officio Tax Receiver.

See Sec. 1101.

Tax Receiver to Settle.

1230. SEC. 9. On the second Monday of December in each year the ex officio Tax Receiver shall also attend at the office of the County Auditor with the assessment roll, and the Auditor shall then and there administer to the ex officio Tax Receiver an oath, which shall be written and subscribed on the assessment roll, to the effect that each person and all property assessed in said roll, or [on] which taxes have been paid to him, has the word "paid" marked opposite the name of such person or a description of such property, and the Auditor shall then foot up the amount of taxes remaining unpaid, and shall make a final settlement with the ex officio Tax Receiver of all taxes charged against him on account of said assessment roll. The Auditor shall then immediately transmit, by mail or otherwise, to the State Controller a statement in such form as he may require, of all and each particular kind of property delinquent, and the total amount of delinquent taxes.

See Sec. 1109.

An Act to fix the state tax levy and to distribute the same to the proper funds.

Approved February 3, 1899, 17.

State Tax Levy.

1231. SECTION 1. For the fiscal year commencing January first, eighteen hundred and ninety-nine, and annually thereafter, an ad valorem tax of one dollar on each one hundred dollars of taxable property is hereby levied and directed to be collected for state purposes, upon all taxable property in this state, including net proceeds of mines and mining claims, except such property as is by law exempted from taxation. Of the tax hereby levied, sixty-six and three-tenths cents shall go into the general fund of the state, nine cents shall go into the territorial interest fund, nine and one-half cents shall go into the state interest and sinking fund, one and one-fifth cents into the state university interest and sinking fund, five cents into the general school fund, one cent into the university interest and sinking fund, 1897, No. 1, one cent into the university interest and sinking fund, 1897, No. 2, seven cents into the contingent university fund.

An Act in relation to levying and assessing taxes for state and county purposes.

Approved March 19, 1891, 189.

Duties of County Commissioners as to the Levy of Taxes.

1232. SECTION 1. All state and county taxes required to be levied by the

Boards of County Commissioners of the several counties of this state in pursuance of the revenue laws of this state, shall hereafter be levied by such Boards of County Commissioners on or before the first Monday of March in each year; *provided*, that if after the equalization of taxes in the several counties of this state, it shall appear that the levy previously made by the Board of County Commissioners of any county of this state for county purposes will result in the collection of a revenue, either in excess or a deficiency of the requirements of such county for the current year, then, and in such event, the Board of County Commissioners in any such county shall have the power, and it is hereby made the duty of such Board of County Commissioners, to immediately meet and either reduce or raise the rate of taxation, so previously levied, to such a sum as such board in its judgment may consider sufficient to insure the collection of such an amount of revenue as will answer all the requirements of such county for such current year. *As amended, Stats. 1893, 119.*

An Act allowing the payment of taxes in equal semi-annual installments and regulating the collection of taxes on personal property.

Approved March 16, 1897, 95.

Taxes Paid in December and June.

1233. SECTION 1. Any person charged with taxes on real estate and personal property according to existing law, may, at his option, pay the full amount thereof on or before the first Monday in December of each year; but if he shall pay one-half of such taxes, as the same shall appear on the assessment roll taxed against him, on or before the first Monday in December of each year, then, in such case, the remaining half of said taxes shall not become delinquent prior to the first Monday in June next ensuing; but if such person shall fail to pay the first half of said taxes, as herein provided, then the entire tax shall become due and shall be collected, as now provided by law, and all taxes, of which the first half shall not be paid on or before the first Monday in December of each year, shall be subject to have added thereto a penalty of ten per cent, and all taxes of the preceding year which remain due and unpaid on the first Monday in June of each year shall be subject to, and there shall be added thereto a like penalty of ten per cent.

Treasurer to Advertise Delinquencies.

1234. SEC. 2. Immediately after the first Monday in June of each year, the County Treasurer, and ex officio Tax Receiver, shall advertise the property upon which such delinquency has attached, and upon which such delinquent taxes are a lien for sale in all cases, and in the same manner, and for the same length of time as he is now required by law to advertise the same, and if the amount of such taxes and delinquency, exclusive of poll tax and penalties, exceed three hundred dollars, action shall be instituted to recover the same, as now provided by law; and if such delinquency amounts to only three hundred dollars or less, then the County Treasurer, as ex officio Tax Receiver, shall advertise and sell the said property for the amount of said delinquency and costs.

Assessor to Collect Entire Amount of Personal Tax, When.

1235. SEC. 3. It is hereby made the specific duty of all County Assessors, at the time of assessing personal property, to collect the entire amount of tax on such personal property, unless the owner thereof shall be the owner of real estate, situate within his county, sufficient, in the judgment of the County Assessor, to amply secure the payment of the entire tax on both such sale as might become a lien thereon, by reason of such taxes becoming delinquent.

An Act to provide revenue for the support of the government of the State of Nevada.

Approved March 6, 1893, 109.

How Railroads Are to Be Assessed.

1236. SECTION 1. In all cases where a railroad is located and is being or has been constructed in or through one or more counties of this state, the President, Secretary, General Superintendent or Managing Agent of the corporation, company or person owning the same, or managing agent thereof, within the county, shall within a reasonable time after demand by the City Assessor of any county in or through which such road is being or has been constructed, furnish to such Assessor a statement under oath or affirmation, which shall be in writing, duly subscribed and sworn to before some officer authorized by the laws of this state to administer oaths, setting forth the length of said road in such county and the value thereof, with a list of the property, real and personal [except rolling stock], pertaining thereto, also the whole length of said road within the state, and the number and value of all locomotives and cars, commonly known as rolling stock, used on said road within this state, and an apportionment of the value of such rolling stock to such county, the same to be estimated according to the proportion which the true portion in said county bears to the whole length of said railroad within the state. But in the event that any portion of the rolling stock or personal property of a railroad company, operated wholly within this state, shall not be used or employed in all the counties through or into which such railroad runs, then such portion of said rolling stock or personal property shall only be assessed in the county or counties where used or employed, and shall not be considered in any apportionment of the value of the rolling stock or personal property of such railroad in counties where not used or employed. The statement, however, shall not be conclusive, nor shall the value therein fixed bind the Assessor; but he shall, notwithstanding, proceed to value and assess said property according to his official judgment.

Definition of the Word "Railroad"—Personal Property Assessed, How.

1237. SEC. 2. The word "railroad" shall be held to include, in addition to the track of said railroad, including the rails, couplings, spikes, ties, bridges, culverts, tunnels, cuts, fills, embankments, and the land owned by the right of way of such railroad, all the structures, fixtures, improvements and buildings of said railroad owned thereon or used in connection therewith. The personal property belonging to said railroad, or used in connection therewith, and in operating the same, including the rolling stock, furniture, tools, implements, wood and coal, shall be valued and assessed separately from the track of said road, and shall be listed and entered on the assessment roll under the head of personal property; all buildings and superstructures belonging to or used in connection with said railroad, except such as form a part of the track of said road, including depots, storehouses, woodsheds, machine shops and round-houses, shall be assessed separately from the track and listed as real estate.

Portion to Be Assessed as Part of Whole.

1238. SEC. 3. In ascertaining, assessing and fixing the value of any railroad for taxation the Assessor shall assess it the same as other property, and shall consider, treat and assess the portion thereof at its value within his county as an integral part of a complete, continuous and operated line of railroad, and not as so much land covered by the right of way merely, nor as so many miles of track consisting of iron rails, ties and couplings.

Failure to Furnish Statement.

1239. SEC. 4. If any corporation, company, or person owning such railroad failing, neglecting, or refusing, after being notified, to furnish a statement for assessment and taxation, as provided in this Act, the County Assessor may proceed to make the assessment in the same manner as in other cases, and as pro-

vided in an Act to provide revenue for the support of the government of the State of Nevada, approved March twenty-three, eighteen hundred and ninety-one.

1. **TAXATION. C. P. R. R. SUBJECT TO.** (Railroad Co. v. Peniston, 18 Wall. 5, cited.) State v. C. P. R. R. Co., 10 Nev. 47.
2. **SWORN STATEMENT OF RAILWAY COMPANY.** Must show affirmatively that the person making it is one of the persons named in the statute, and be subscribed by him. State v. Washoe Co., 5 Nev. 317.
3. **FAILURE TO MAKE STATEMENT.** Excludes company from benefits of equalization. Id.
4. **FAILURE OF ASSESSOR TO DEMAND STATEMENT.** Held, that the burden of proof was upon the railroad company desiring equalization to show the fact of neglect to make the demand. Id.

See State v. Washoe Co., 7 Nev. 83.

5. **FAILURE TO MAKE STATEMENT—EXCLUDES FROM EQUALIZATION—SUFFICIENCY OF STATEMENT—DESCRIPTION OF PROPERTY—VERIFICATION OF STATEMENT GOOD WHEN INTENTION IS CLEAR—DELIVERY OF STATEMENTS PROVEN ORALLY.** State v. C. P. R. R. Co., 17 Nev. 259.
6. **RAILROAD COMPANIES—TAXATION OF SURVEYED, UNPATENTED LANDS.** Since the Act of Congress of July 10, 1886, the surveyed but unpatented lands within the grant to the Central Pacific railroad are no longer exempt from taxation by reason of the government lien thereon for the costs of surveying, etc. The conditions contained in that Act to the effect that the lien shall continue, and that the United States may become a preferred purchaser at any tax sale of such land, control such sales, and there is no necessity for a legislative acceptance by the states of the conditions of the Act. State v. C. P. R. Co., 21 Nev. 247.
7. **RAILROADS.** The cash value of a railroad is measured by the amount of cash required to procure it, provided its utility is commensurate with its cost; and the amount of cash required to procure a railroad is, the necessary cost of its construction. State v. C. P. R. Co., 10 Nev. 47.

Principles of valuation and taxation elaborately discussed and explained. Id.

8. **VALUE OF RAILROAD, HOW DETERMINED—NET INCOME, WHEN GOVERNS.** The actual cost of a railroad is *prima facie* its value; but if it appears that the actual cost was in excess of the necessary cost, the necessary cost is its proper standing. If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired, by competition or other cause, or, in short, if the utility of the road is not equal to its cost, then its value is less than its cost, and must be determined by reference to its utility alone. (State v. C. P. R. R. Co., 10 Nev. 47, affirmed.) State v. V. & T. R. R. Co., 23 Nev. 283.

MEANING OF TERM "CASH VALUE" AS APPLIED TO RAILROADS. Under Stats. 1891, pp. 137, 138, providing that all property shall be assessed at its actual cash value, and that the term "cash value" means the amount at which the property would be appraised if taken in payment of a just debt from a solvent debtor, the value of a railroad for the purpose of taxation must be determined mainly by its net earnings, capitalized at the current rate of interest, taking into consideration any immediate prospect of an increase or decrease in the earning capacity of the road. Id.

NET EARNINGS OF RAILROAD. Replacing bridge deducted as part of expenses of the year. Id. State v. V. & T. R. Co., 23 Nev. 432; State v. V. & T. R. Co., 24 Nev.

9. **OMISSION TO STATE NUMBER OF ACRES—WHEN IT DOES NOT INVALIDATE ASSESSMENT OF RAILROADS.** The omission of the Assessor to state the number of acres of land assessed to a railroad company where the number of miles of the road is stated—where it is not shown that the railroad company was injured by the failure to state the number of acres—does not make the assessment void. State v. C. P. R. Co., 10 Nev. 47.

An Act supplementary to an Act entitled "An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain other Acts relating thereto," approved March 23, 1891.

Approved March 6, 1893, 106.

Commissioners May Order Treasurer to Sell Property—Notices, How Posted.

1240. SECTION 1. Whenever the time allowed by law for redemption of any property sold to any County Treasurer for delinquent taxes, under the provisions of section fifty-five of the Act to which this Act is supplementary, shall have expired, and the Treasurer shall have come in possession of a deed to any property of an assessed value of less than five hundred dollars the Board of County Commissioners of such county may, by an order entered upon the record of the proceedings of said board, direct the Treasurer or his successor in office to sell such property, and the proceeds of such sale shall be applied as now provided by law; *provided*, that notice of such sale shall be posted in at least three public places in the county, including one at the court house and one on the property, for a period of not less than twenty days prior to the day of sale, and no newspaper publication shall be required in any case where the assessed valuation of the property to be sold is less than five hundred dollars. *As amended, Stats. 1899, 79.*

STATUTE CONSTRUED. Lyon Co. v. Ross, 24 Nev.

An Act authorizing commissions on the collections from personal property tax, poll tax, and the tax on the proceeds of mines, and defining the manner in which said commissions shall be appropriated.

Approved March 5, 1885, 62.

Commissions on Certain Tax Collections.

1241. SECTION 1. On all moneys collected from personal property tax, poll tax, and the tax on the proceeds of mines; by the several County Assessors in this state, there shall be reserved and paid into the county treasury, for the benefit of the general fund of their respective counties, by said County Assessor, the following percentage commissions: First, on the gross amount of collections from personal property tax, six per cent; second, on the gross amount of collections from poll tax, ten per cent; third, on the gross amount of collections from the tax on the proceeds of mines, three per cent.

An Act authorizing the licensing of itinerant and unsettled merchants and traders.

Approved March 14, 1899, 105.

Itinerant or Unsettled Merchants Must Have License.

1242. SECTION 1. It shall be unlawful for any itinerant or unsettled merchant or trader to sell or offer to sell any goods, wares or merchandise then in the State of Nevada, at any place in the State of Nevada where a license therefor may be required, as hereinafter provided, without first obtaining and paying for such license; and all sales, or contracts of sales, made without such license shall be null and void.

Meaning of an "Itinerant or Unsettled Merchant."

1243. SEC. 2. An itinerant or unsettled merchant or trader, within the meaning of this Act, shall include every person, firm or corporation, who, either in person or by agent, sells or offers to sell any goods, wares or merchandise then in the State of Nevada, without any manifest intention of permanently settling, locating or residing at some one place in said state, and who is not permanently located and regularly taxed therein.

Amount of Monthly License Required.

1244. SEC. 3. The Boards of County Commissioners of the several counties of this state, and the City or Common Council of any incorporated city in this state, shall have the power, by resolution or ordinance, to require a monthly license of not less than five dollars or more than one hundred dollars, of each and every itinerant or unsettled merchant or trader, of any class of goods, wares or merchandise in such county or city.

Licenses, How Issued and Collected.

1245. SEC. 4. Licenses under this Act shall be issued and collected as other city and county licenses are issued and collected. The provisions of this Act shall not apply to the sale, or offering to sell, by the producer thereof, of the products of any farm, ranch or range.

Violation—Penalty.

1246. SEC. 5. Any person violating any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than five hundred dollars, or imprisoned not less than ten days nor more than one hundred days.

Ex Parte Siebenhauer, 14 Nev. 365; Mandlebaum v. Gregovich, 17 Nev. 88.

An Act licensing the sale of cigarettes and cigarette paper, and other matters relating thereto.

Approved March 1, 1897, 29.

Cost of License.

1247. SECTION 1. From and after the passage of this Act the quarterly license for the sale of cigarettes or cigarette paper shall be fifteen dollars.

Must Take Out License.

1248. SEC. 2. Any person, firm, association or corporation engaged in dealing, in selling, giving away or offering to sell cigarettes or cigarette paper after the passage of this Act, shall take out a quarterly license provided for in section one of this Act.

Must Not Sell or Give to Person Under Twenty-One Years.

1249. SEC. 3. It shall be unlawful for any person or persons, firm, association, corporation or managing agent of any person, firm, association or corporation to sell, give away or offer to sell cigarettes or cigarette paper to any person or persons under the age of twenty-one years.

Penalty.

1250. SEC. 4. Any person, firm, association or corporation or the managing agent of any person, firm, association or corporation violating the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each and every offense in any sum not less than one hundred dollars nor more than five hundred dollars.

Collected and Accounted For.

1251. SEC. 5. The license provided for in this Act shall be collected and accounted for in the same manner as other licenses for state and county purposes are now collected.

This Act supersedes an Act on the same subject, Stats. 1893, 33.

An Act providing for the payment of a portion of the moneys collected for county licenses for the sale of liquors into the city treasury of incorporated cities within such county.

Approved February 17, 1893, 25.

Apportionment of License in Incorporated Towns.

1252. SECTION 1. In every county in this state which now has or may hereafter have a duly incorporated city government, it shall be the duty of the License Collector of said county to pay in the city treasury one-half of the amount of license moneys collected from any person or persons for disposing of any spirituous, malt or fermented liquors, or wines, in less quantities than one quart, within the corporate limits of said city.

This Act supersedes an Act on the same subject, Stats. 1887, 114.

An Act to provide revenue for the support of the government of the State of Nevada.

Approved March 13, 1895, 59.

Assessments of Live Stock—Upon Uninclosed Lands.

1253. SECTION 1. In the cases of horses, mules, asses, cattle, sheep, goats, hogs and all other live stock running at large and grazing upon uninclosed lands, whether in charge of a herder or not, the assessment provided for by the general revenue law of this state may be made, and the taxes thereon collected at any time during the calendar year; and the fact that such live stock may have been assessed, and the taxes thereon for the same year paid in some other state or territory, shall not exempt it from assessment and taxation in this state. When such live stock is the property of non-residents of this state its situs for purposes of taxation shall be the county in which it is first assessed; *provided*, that nothing herein contained shall be so construed as to prevent the free passage of such live stock through this state for commercial purposes, or to deny to the citizens of each state all the privileges and immunities of citizens of the several states.

Tax to Be Equalized, When.

1254. SEC. 2. When the property described in section one of this Act shall have been assessed as therein provided and the taxes thereon collected, as prescribed by the general revenue law of this state upon complaint in writing by the owner, his agent or any person aggrieved (which complaint shall be made within ten days after the collection of said taxes, and shall be filed with the County Clerk), that the assessment was too high or too low, it shall be the duty of the Board of County Commissioners within ten days after the filing of such complaint, to meet as a Board of Equalization to equalize the same, and the proceedings shall be the same as in other cases of equalization.

An Act to encourage agriculture.

Approved March 16, 1895, 92.

Resident Pays No License—Certain Counties.

1255. SECTION 1. Any citizen or resident of the State of Nevada shall be permitted to sell fruits, eggs, and poultry, also pork and beef by the quarter, and any other agricultural products of his own industry without the payment of license; *provided*, that in all counties in this state which cast at the last general election not less than four hundred votes nor more than seven hundred votes, to be determined by the vote cast for Secretary of State, pork and beef may be sold in any quantities less than a quarter without the payment of a license. *As amended, Stats. 1899, 32.*

An Act supplemental to an Act entitled "An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto," approved March 23, 1891, and to all Acts amendatory thereof, and to provide for a license upon the business of owning, raising, grazing, herding or pasturing sheep in the several counties of the State of Nevada, and to declare a violation thereof a misdemeanor, and to provide a punishment therefor.

Approved March 12, 1895, 53.

License for Running Sheep—Grades.

1256. SECTION 1. Every person now engaged in, or who may hereafter engage in the business of owning, raising, grazing, herding or pasturing sheep, as either owner, lessee or manager of said sheep, in any county in the State of Nevada must annually procure a license therefor from the Sheriff as Collector of Licenses of each of such counties and make payment therefor as follows in advance for each band, flock or bunch of sheep:

First—Such person owning or having in his possession or under his control as lessee or manager five thousand sheep or more shall be deemed of the first class, and must pay the sum of two hundred and fifty dollars per annum for the first five thousand sheep and the further sum of fifty dollars per annum for every additional one thousand sheep or fraction thereof.

Second—Such person owning or having in his possession or under his control as lessee or manager four thousand sheep and less than five thousand shall be deemed of the second class, and must pay the sum of two hundred dollars per annum.

Third—Such person owning or having in his possession or under his control as lessee or manager three thousand sheep and less than four thousand shall be deemed of the third class, and must pay the sum of one hundred and fifty dollars per annum.

Fourth—Such person owning or having in his possession or under his control as lessee or manager two thousand sheep and less than three thousand shall be deemed of the fourth class, and must pay the sum of one hundred dollars per annum.

Fifth—Such person owning or having in his possession or under his control as lessee or manager fifteen hundred sheep and less than two thousand shall be deemed of the fifth class, and must pay the sum of seventy-five dollars per annum.

Sixth—Such person owning or having in his possession or under his control as lessee or manager one thousand sheep and less than fifteen hundred shall be deemed of the sixth class, and must pay the sum of fifty dollars per annum.

Seventh—Such person owning or having in his possession or under his control as lessee or manager any number of sheep less than one thousand shall be deemed of the seventh class, and must pay the sum of twenty-five dollars per annum; *provided*, that the provisions of this Act shall not apply to any person, persons, firm, company, association or corporation who shall be the owner and holder of land in the State of Nevada equal to one acre for each two sheep so owned, raised, grazed, herded, or pastured; *and it is further provided*, that nothing in this Act contained shall be so construed as to require the procurement of more than one license for the same sheep in the same county, for the same year.

License Must Be First Procured—Penalty for Violation.

1257. SEC. 2. Every person who shall engage in the business of raising, grazing, herding or pasturing of any sheep as either owner, lessee or manager thereof within any county of the State of Nevada without first having procured a license therefor as prescribed by this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine for each offense of not less than fifty dollars nor more than two hundred and fifty dollars, or imprisonment in the county jail for a period of not less than twenty-five days or more than ninety days.

Collector of Licenses to Examine—Statement Under Oath—Action Instituted—Costs of Action.

1258. SEC. 3. The Sheriff, as Collector of Licenses, of each county of the State of Nevada shall make diligent inquiry and examination concerning all persons in his county liable to the procurement of license as provided in this Act, and he is hereby empowered, and it shall be his duty to require each such person to make a statement under oath or affirmation of the number of sheep then or about to be owned by him or then or about to be in his possession or under his control as lessee or manager thereof within such county. Thereupon such person shall procure such license from such Sheriff as Collector of Licenses according to the class to which he shall be shown by the number of such sheep to belong; and in all cases wherein an underestimate of the number of sheep is made by the person procuring such license, the person making such underestimate shall be required to pay a double license for the next year. Such license when procured shall authorize the party procuring the same within the county wherein the same is procured but in no other county to transact business as specified in such license; and if any such person required by the provisions of this Act to procure a license shall fail, neglect or refuse to procure such license in the manner provided in this Act or shall engage in or attempt to engage in any of the business mentioned in this Act without procuring such license therefor, the Sheriff as Collector of Licenses shall direct the commencement of, and the District or Prosecuting Attorney of the county shall immediately commence an action in the name of the State of Nevada as plaintiff against such person for the recovery of the license money and all damages according to the class in this Act specified to which such person shall be proven to belong, and in such action either the Sheriff as Collector of Licenses or the District or Prosecuting Attorney of the county, where such action is commenced may make the necessary affidavit and cause the undertaking to be furnished, necessary to the procurement of the issuance of the writ of attachment and a writ of attachment shall thereupon be issued and may be levied upon the sheep of such owner, lessee or manager within such county, and in case of recovery by the plaintiff in such action, judgment shall be entered for the amount found due for such license and twenty-five dollars liquidated damages for non-procurement of licenses and all costs of such action, of which damages, ten dollars shall be paid to the Sheriff as Collector of Licenses and fifteen dollars thereof shall be paid to the District or Prosecuting Attorney for their services in the action. Upon the trial of any criminal action provided for in this Act, the defendant shall be deemed to have not procured the proper license unless he produces it or proves that he did procure it, but he may plead in bar of a criminal action a recovery and payment in a civil action against him of a judgment of proper license money damage and costs.

County Auditors to Prepare Licenses.

1259. SEC. 4. The County Auditors of the several counties of this state shall prepare, have printed and delivered to the Sheriff as License Collector of the several counties suitable blank licenses for the proper enforcement of the provisions of this Act with blank receipts for the same when sold.

Fee of Sheriff.

1260. SEC. 5. The Sheriff as Collector of Licenses shall demand and collect from the person procuring such license a fee of two dollars for each license sold by him in addition to the amount paid for such license.

Sheriff Receives Twenty Per Cent.

1261. SEC. 6. All moneys collected for licenses under the provisions of this Act, less twenty per cent (which may be retained by the Sheriff as his commission for collecting the same) shall be paid to the County Treasurer of the county wherein such licenses are collected, and shall be, by him, placed to the credit of the general fund of such county. *As amended, Stats. 1897, 114.*

Word "Person" Defined.

1262. SEC. 7. Whenever the word "person" occurs in this Act it shall be held to apply to and include any person, persons, firm, company, association or corporation.

LICENSE—LANDHOLDERS. The word "holder," as used in the Stats. 1895, p. 53, requiring sheep owners who are not the owners and holders of one acre of land for each two sheep to procure a license, means one who is in possession, actual or constructive, of the land. *State v. Wheeler*, 23 Nev. 143.

LESSEE OF THE LAND—OWNER. A lessee of land for a fixed term is an owner thereof, within the meaning of that law. *Id.*

An Act to restrict gaming, and to repeal all other Acts in relation thereto.

Approved March 8, 1879, 114.

License Must Be Procured—Penalty for Violation.

1263. SECTION 1. Each and every person who shall deal, play, carry on, or cause to be opened, or who shall conduct, either as owner or employee, whether for hire or not, except under a license, as hereinafter provided, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, keno, fantan, twenty-one, red-white-and-blue, red-and-black or diana, percentage or stud-horse poker, or any banking or percentage game, played with cards, dice, or any other device, whether the same be played for money, checks, credit, or any other valuable thing or representative of value, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand nor more than three thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both such fine and imprisonment. *As amended, Stats. 1885, 12.*

Manner of Procuring License—Description of Premises to Be Filed in Office of County Clerk.

1264. SEC. 2. Any person may procure a license for carrying on any one of the games mentioned in section one of this Act, in any single room, upon the payment to the Sheriff of the county in which the same is situated, the amount of license money fixed in section four of this Act, and upon giving to said Sheriff a definite description of the room in which he designs to carry on said game, and filing with the County Clerk of the county a copy of said description.

Auditor to Prepare Blank License—Form of License—Force of License.

1265. SEC. 3. Blank licenses shall be prepared by the County Auditor, which shall be issued and accounted for as is by law provided in respect to other county licenses. Each license delivered by the Sheriff under this Act to any person shall contain the name of the licensee, a particular description of the room in which the licensee desires to carry on the game licensed, and shall by its terms authorize the licensee to carry on one of the games mentioned in the first section of this Act, specifying it by name in the room therein described, for the period of one month next succeeding the date of issuance of the license. The said license shall protect the licensee and his employer or employers against any criminal prosecution for dealing or carrying on the game mentioned in the room described during said one month, but not for dealing or carrying on any other game than that specified, or the specified game in any other place than the room so described; *provided*, that the licensee shall be entitled to deal or play, or carry on two or more games in the same room, by paying a license for each game so dealt or carried on.

Amount to Be Paid Sheriff for Licenses.

1266. SEC. 4. The amount to be paid to the Sheriff shall be one hundred dollars for the first month, and seventy-five dollars for each successive month, so long as the licensee shall deal or carry on, or cause to be dealt or carried on, said game or games in the same room.

Money, How to Be Used.

1267. SEC. 5. All moneys received for licenses under the provisions of this Act shall be paid, three-quarters into the county treasury, and one-quarter into the state treasury, for general county and state purposes respectively.

Owners of Property Subject to Prosecution in Certain Cases.

1268. SEC. 6. Every person who shall knowingly permit any of the games mentioned in the first section of this Act to be played, conducted, dealt or carried on in any house owned by him or her, in whole or in part, except by a person who has received a license, as herein provided, or his employee, and in the rooms described therein, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section one of this Act.

Where Game Not to Be Carried On.

1269. SEC. 7. The licensee shall not carry on his game in any front room on the first or ground floor of any building, and if any person carrying on any of said games shall knowingly permit to enter or remain in any licensed room any person under the age of twenty-one years, he shall be deemed guilty of a misdemeanor, and shall be punished by the same penalties, for violation of its provisions, as are prescribed in section one of this Act. *As amended, Stats. 1893, 36.*

Licensed Games Cannot Be Suppressed.

1270. SEC. 8. No town, city, or municipal corporation in this state shall hereafter have power to prohibit, suppress, or regulate any gaming house or game licensed as provided by this Act.

Not Excusable from Testifying.

1271. SEC. 9. No person otherwise competent as a witness shall be disqualified or excused from testifying as such, either before a grand or petit jury, or any court, to any facts concerning the offenses mentioned in the foregoing sections of this Act, on the ground that his testimony may criminate himself.

Fee of District Attorney for Conviction.

1272. SEC. 10. The District Attorney of the county shall receive two hundred and fifty dollars for each conviction of any person charged with the commission of any of the offenses mentioned in this Act, which sum shall be taxed as costs in the action; but in no case shall such costs be a charge against the county.

Thieving Games Prohibited—Penalty.

1273. SEC. 11. Any person or persons taking out license to deal any of the games mentioned in section one of this Act, or any proprietor of any building in which any of said games are dealt, who shall knowingly or otherwise deal or allow to be dealt, any cheating or thieving game, or games known as "hogging games," shall be deemed guilty of a misdemeanor, and shall be punished by the same penalties for violation of its provisions as are prescribed in section one of this Act.

STATUTES LICENSING GAMING ONLY PROTECTS FROM CRIMINAL PROSECUTION—GAMING DEBTS NOT RECOVERABLE. *Scott v. Courtney*, 7 Nev. 419.

See *Evans v. Cook*, 11 Nev. 69.

An Act to exempt incorporated cities and towns from the payment of costs in certain cases.

Approved March 1866, 185.

Costs Not to Be Charged Against City or Town.

1274. SECTION 1. In any suit commenced, or hereafter to be commenced, in any incorporated city or town of this state for the collection of delinquent taxes, no costs shall, in any event, be charged against or collected from such city or town.

PUBLIC SCHOOLS.

An Act to provide for the maintenance and supervision of public schools.

Approved March 20, 1865, 413.

What to Go Into School Fund.

1275. SECTION 1. The principal of all moneys accruing to this state from sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed for public school purposes, all fines collected under the penal laws of the state, two per cent of the gross proceeds of all toll roads and bridges, and all estates that may escheat to the state, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses, but shall constitute an irreducible and indivisible fund, to be known as the state school fund, the interest accruing from which shall be divided semi-annually among all the counties in this state entitled, by the provisions of this Act, to receive the same, in proportion to the ascertained number of persons between the ages of six and eighteen years in said counties, for the support of public schools. *As amended, Stats. 1867, 89.*

SECS. 2 and 3 (State Board of Education) are superseded, SECS. 1343-1346.

Election of Superintendent of Public Instruction.

1276. SEC. 4. The Superintendent of Public Instruction shall be elected by the qualified voters of the state, at the general election for state and county officers, to be held in the year eighteen hundred and sixty-six, and every four years thereafter at such general elections, and shall enter upon the duties of his office on the first Monday in January next after his election. He shall be paid a salary of two thousand dollars per annum.

Superintendent to Apportion Money to the Several Counties.

1277. SEC. 5. It shall be the duty of the Superintendent of Public Instruction, subject to the supervision of the State Board of Education, immediately after the State Controller shall have made his semi-annual report as hereinafter required, to apportion to the several counties the amount of school money in the state treasury, to which each shall be entitled under the provisions of this Act, in proportion to the number of persons between the ages of six and eighteen years residing therein, as shown by the last previous reports of the County Superintendent, and to furnish to the State Controller, to each County Treasurer, to each County Auditor, and to each County Superintendent, an abstract of such apportionment, and with such apportionment to furnish each County Treasurer his order on the State Controller, under the seal of the State Board of Education, for the amount of school moneys in the state treasury to which such counties shall be entitled, and to take such County Treasurer's receipt for the same. *As amended, Stats. 1867, 90; 1877, 187.*

Newnham v. State Board of Education, 18 Nev. 173.

Superintendent's Report.

1278. SEC. 6. The Superintendent of Public Instruction shall report to the Governor biennially, on or before the first of December of the years preceding the regular session of the legislature. The Governor shall transmit said report to the legislature, and whenever it is ordered published, the State Printer shall deliver two hundred and fifty copies to the Superintendent, who shall distribute the same among school officers of the state and of the United States. Said report shall contain a full statement of the condition of public instruction in the state; a statement of the condition and amount of all funds and property appropriated for the purpose of education; the number and grade of schools in each county; the number of children in each county between the ages of six and eighteen years; the number of such attending public schools; the number of such attend-

ing private schools; the number attending no school; the number under six years of age; the number between eighteen and twenty-one years of age; the amount of public school moneys apportioned to each county; the amount of money raised by county taxation, district tax, rate bills, subscription, or otherwise, by any city, town, district, or county, for the support of schools therein; the amount of money raised for building school houses; a statement of plans for the management and improvement of public schools; and such other information relative to the educational interests of the state as he may think of importance. *As amended, Stats. 1869, 169.*

Duties of Superintendent of Public Instruction.

1279. SEC. 7. The Superintendent of Public Instruction shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under this Act, and shall cause the same, with such instructions as he shall deem necessary and proper, for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. He shall prepare a convenient form of school register, for the purpose of securing more accurate returns from teachers of public schools, and shall furnish each County Superintendent with a number sufficient to supply at least one copy thereof to each district or school of such county. He shall prepare pamphlet copies of the school law, and all amendments thereto, and shall transmit a number of the same to the County Superintendents, sufficient to supply each and every School Trustee, School Marshal, and school teacher with at least one copy of the same. *As amended, Stats. 1873, 156.*

State Teachers' Institutes.

1280. SEC. 8. The Superintendent of Public Instruction, by and with the consent of the Board of Education, shall have power to convene a state teachers' institute annually, in such place, and at such time, as he may deem advisable, and shall preside over and regulate the exercises of such institute. He shall engage such lecturers and teachers as he may deem advisable to conduct the exercises of such institute, which shall be continued not less than five nor more than ten days. The expenses incurred in holding such state institute, not exceeding one hundred dollars, shall be paid out of the general fund; and the State Controller is hereby authorized and directed to draw his warrants for the same upon the order of the State Board of Education, approved by the State Board of Examiners. *As amended, Stats. 1867, 90.*

Visiting Schools—Expenses.

1281. SEC. 9. It shall be the duty of the Superintendent of Public Instruction to visit each county in the state, at least once in each year, for the purpose of visiting schools, of consulting County Superintendents, of lecturing and addressing public assemblies on subjects pertaining to public schools; and the actual traveling expenses incurred by the Superintendent in the discharge of his duty, shall be allowed, audited, and paid out of the general fund, in the same manner as claims upon said fund are now allowed, audited and paid; *provided*, that the sum so expended in any one year shall not exceed one thousand dollars. *As amended, Stats. 1867, 91.*

Superintendent to Deliver Books, etc., to Successor.

1282. SEC. 10. The Superintendent of Public Instruction shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property and effects belonging to his office, and take his receipt for the same. *As amended, Stats. 1867, 91.*

School Money to Be Paid Over, How.

1283. SEC. 11. It shall be the duty of the State Treasurer to pay over all public school moneys received by him only on warrants of the State Controller, issued upon orders of the Superintendent of Public Instruction, under seal of

the Board of Education, in favor of County Treasurers, or on orders of the State Board of Education, for purposes of investment, as provided in section three of this Act, which orders, duly indorsed, shall be valid vouchers in the hands of the State Controller for the disbursement of public school moneys. *As amended, Stats. 1867, 91.*

When Money to Be Paid Over.

1284. SEC. 12. All school moneys due each county in the state shall be paid over by the State Treasurer to the County Treasurers, on the tenth day of January and the tenth day of July of each year, or as soon thereafter as the County Treasurer may apply for the same, upon the warrant of the State Controller, drawn in conformity with the apportionment of the Superintendent of Public Instruction, as provided in section five of this Act. *As amended, Stats. 1867, 91.*

Controller to Keep Account.

1285. SEC. 13. The State Controller shall keep a separate and distinct account of the public school fund, and of the interest and income thereof, together with such moneys as shall be raised by state tax, or special appropriation, or otherwise, for the support of public schools.

Controller to Furnish Statements.

1286. SEC. 14. The State Controller shall, on or before the tenth day of April and the tenth day of October, of each year, make to the State Board of Education a statement of the securities belonging to the state school fund. He shall, also, on or before the tenth day of January and the tenth day of July, in each year, render to the Superintendent of Public Instruction a statement of the moneys in the treasury subject to distribution to the several counties of the state, as provided in section five of this Act. *As amended, Stats. 1867, 91.*

Duties of County Treasurers in Reference to School Moneys—Treasurer to Report to Superintendent—Penalty.

1287. SEC. 15. It shall be the duty of the County Treasurer of each county: First—To receive and hold as a special deposit all public school moneys, whether received by him from the State Treasurer or raised by the county for the benefit of public schools, or from any other source, and to keep a separate account thereof, and of their disbursements. Second—On receiving any public school moneys, subject to distribution, to notify the County Superintendent of Public Schools of the amount thereof. Third—To pay over all public school moneys received by him only on warrants of the County Auditor, issued upon orders of the County Superintendent of Public Schools of such county, which orders shall be valid vouchers in the hands of the County Auditors for warrants drawn upon such orders. Fourth—On or before the first day of October, annually, to make a full report to the Superintendent of Public Instruction of the public school moneys received into the county treasury within the school year ending on the last day of August next previous thereto, with a particular statement of the disbursement of the said school moneys, and of any amount of said school moneys which may remain in his hands for distribution at the close of such school year, designating whether of state or county school fund; and in case of the failure or neglect of said County Treasurer to make such report, he shall forfeit for the benefit of the county school fund the sum of one hundred dollars from his official compensation; and it is hereby made the duty of the County Commissioners, on notice from the Superintendent of Public Instruction, of such failure or neglect on the part of any County Treasurer, to deduct said one hundred dollars from his compensation, and place said amount to the credit of the county school fund. *As amended, Stats. 1873, 157; 1877, 187.*

Election of County Superintendent Oath Bond.

1288. SEC. 16. A County Superintendent of Public Schools shall be elected

in each county at the general election in the year eighteen hundred and sixty-six, and every two years thereafter, who shall take his office on the first Monday in January next succeeding his election, and hold for two years, and until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the Board of Commissioners of said county.

The District Attorney is ex officio County Superintendent in all counties except Lyon, in which the Recorder is ex officio Superintendent.

Sec. 17 superseded, Sec. 1338.

Duties of County Superintendent.

1289. SEC. 18. The County Superintendent shall have power, and it shall be his duty: First—To visit each public school in his county, within ten miles of the county seat, at least once in each term; *provided*, that he shall visit all the schools in his county once in each year; to exercise a general supervision over the interests of the public schools in his county, and give to the School Trustees, Marshals, and teachers such aid as may be important to the prosperity of the schools. Second—To distribute promptly such blank reports, forms, laws, and instructions as shall be received by him from the Superintendent of Public Instruction for the use of School Trustees, Marshals, and teachers, and any other officers entitled to receive the same. Third—To keep on file in his office the reports of the School Trustees, Marshals, and teachers received by him, and to record all his official acts in a book to be provided for that purpose, and at the close of his official term to deliver to his successor such records, and all documents, books, and papers belonging to his office, and to take duplicate receipts for the same, which shall be filed in the office of the County Treasurer and the County Auditor. Fourth—To make a full report annually, on or before the fifteenth day of September, for the school year ending on the last day of August next previous thereto, to the Superintendent of Public Instruction, such report to include an abstract of all the various annual reports of the City Boards of Education, School Trustees, Marshals, and teachers, by law required to be made to the County Superintendent for the preceding school year. Fifth—To preside over, regulate, and conduct all county teachers' institutes which may be called under the provisions of the section of this Act providing for the calling of such institutes. Sixth—To appoint School Trustees in all the districts in which the qualified voters fail to elect, and to fill by appointment all vacancies occurring in said office. Seventh—To draw his orders on the County Auditor in favor of the Board of Trustees, for warrants on the County Treasurer, for the purchase of school books which may be furnished by said Trustees to indigent children of the district, making the same payable out of the county school moneys apportioned to such district. *As amended, Stats. 1867, 92; 1869, 169; 1873, 156; 1877, 189.*

Failure to Make Report.

1290. SEC. 19. If the County Superintendent fail to make a full and correct report to the Superintendent of Public Instruction of all statements required to be made by law, he shall forfeit the sum of two hundred dollars from his salary; and the Board of Commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon information from the Superintendent of Public Instruction that such returns have not been made; and in case said Superintendent remains delinquent for a period of two months, it shall be the duty of the State Superintendent of Public Instruction to give notice to the Board of County Commissioners of such county of the removal from office of said delinquent, and the appointment of some other person to fill the vacancy.

Teachers' Institutes.

1291. SEC. 20. The County Superintendent shall have the power to call one or more teachers' institutes annually, and the expense of such institutes shall be payable out of the county general fund, upon the warrant of the County Superin-

tendent; *provided*, that the Board of Commissioners authorize such institutes upon the application of the County Superintendent; *and, provided*, that the expenses of such institutes shall not exceed the sum of one hundred dollars in any one year.

May Appoint Deputy.—Proviso.

1292. SEC. 21. * * * He may appoint a deputy, who shall have authority to transact all the business of the office during the absence or inability of the Superintendent; *provided*, that the county shall not be responsible for the payment of the salary of such deputy. He shall, in person or by deputy, attend at his office during business hours of Saturday of each week, for the purpose of drawing warrants and the transaction of any other official business. *As amended, Stats. 1869, 171; 1873, 159.*

SECS. 22 and 23 (election of Trustees) superseded, SECS. 1763–1781.

Board of Trustees, Duties Of.

1293. SEC. 24. It shall be the duty of the Trustees, a majority of whom shall constitute a quorum for the transaction of business, to meet as soon as practicable after taking the oath of office, at such place as may be most convenient in the district, and to organize by appointing one of their number Clerk of the Board, who shall preside at official meetings of the Trustees and record their proceedings in a book to be provided for the purpose; and all such proceedings, when so recorded, shall be signed by said Clerk. Said book shall at all times be subject to the inspection of any taxpayer in the district; and said Clerk shall cause full minutes of the proceedings of each session of the board to be published in some newspaper having general circulation in the district; *provided*, that such publication may be had without expense to the district. In districts having a school population of three hundred or more, the Clerk of the Board of Trustees may receive such salary as said board may allow; *provided*, that such salary shall not exceed ten dollars per month. *As amended, Stats. 1869, 171; 1873, 56.*

Powers of School Trustees—Conveyance of Real Estate.

1294. SEC. 25. Each Board of Public School Trustees shall constitute a body corporate, and shall have care and custody of all school property within their district. They shall have power to convey by deed all the estate or interest of their district in any school house or site directed to be sold by vote of the district. It shall be their duty, directed by a vote of their district, to build, purchase, or hire school houses for the use of the district, and also, without such vote, to cause any needed repairs of the same, when the expense of such repairs will not exceed five hundred dollars, and to supply school houses with necessary furniture, fixtures, and fuel; *provided*, that no public school house shall be erected in any school district in the state until the plan of the same has been submitted to and approved by the County Superintendent of Public Schools. County Superintendents may refuse to draw their warrants in payment of expenses incurred in disregard of this provision. Trustees shall cause to be erected such outhouses as decency requires; and in case of failure or neglect in this particular, it shall be the duty of the County Superintendent to cause the work to be done, and to pay for the same out of the fund belonging to the delinquent district. All conveyances of real estate made to the Board of School Trustees shall be in their corporate name and to their successors in office. *As amended, Stats. 1867, 93; 1869, 171; 1873, 156.*

Board of Trustees May Buy Supplies.

1295. SEC. 26. No Trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member; *provided*, that any school district in this state which, at the last school census taken in the year 1894 by the School Census Marshal in said district, had an enumeration of not less than one hundred and fifty school census children, and not exceeding four hun-

dred, resident within such district, or any district which may in the future have an enumeration of not less than one hundred and fifty school census children, and not exceeding four hundred, the Board of Trustees for such district, may purchase supplies for such district not exceeding in the aggregate the sum of thirty dollars in any one month from one of their number, when in the judgment of said Board of Trustees it would be an inconvenience not to do so, but the member from whom said supplies are purchased shall not vote upon the allowance of any bill for the same, and any contract made in violation of this section shall be null and void. *As amended, Stats. 1895, 26.*

Annual School Census—School Census Marshal.

1296. SEC. 27. It shall be the duty of the Trustees in each district to take, or cause to be taken by a School Census Marshal, annually, in the month of May, an enumeration of all the children between the ages of six and eighteen years, resident within such district, and return a certified copy thereof, under oath, to the County Superintendent, on or before the first day of July next following. The Trustees shall also report the number of schools, specifying the different grades; the number of teachers, male and female; the number of children, male and female, who have attended school within the past year; the average attendance; the length of the term of school; the compensation of teachers, male and female; the number and condition of school houses and furniture, and the estimated value thereof; the number of books in public school libraries; the text books used in schools; the kind and value of school apparatus; the amount of money raised by rate bills, district taxation, and subscription for school purposes; the amount expended in erecting and furnishing school houses, and such other statistics as the Superintendent of Public Instruction may require. *As amended, Stats. 1867, 94; 1869, 172.*

No Discrimination Between Male and Female Teachers—Trustees May Discharge Teachers.

1297. SEC. 28. It shall be the duty of the School Trustees to employ teachers, and to certify the amount due them for services, to the County Superintendent, who shall draw his order on the County Auditor for a warrant on the County Treasurer for the amount; *provided*, that salaries of teachers shall be determined by the character of the service required, and that in no district shall there be discrimination in the matter of salary as against female teachers. Trustees may dismiss any teacher at any time, for such reasons as they may deem sufficient; they shall visit the school or schools under their charge at least once in each term, by one or more of their number, with such other persons as they may choose to invite. *As amended, Stats. 1873, 156; 1877, 190.*

School Trustees to Furnish Maps, Charts, etc.—Divide Schools Into Departments—Right to Suspend—Children Excluded—Trustees to Turn Over Books, etc.

1298. SEC. 29. The School Trustees shall have power, and it shall be their duty: First—To provide school houses with maps, blackboards, furniture, and other necessary appendages, including library and cabinet cases, if deemed expedient, and pay for the same out of the county school moneys belonging to their district. Second—To provide books for the indigent children, and record books for the district, and to pay for the same out of the county school moneys belonging to their district. Third—To divide the public schools within their district into infant (taught by the Froebel system), primary, grammar, and high school departments, and to employ competent and legally qualified teachers for the instruction of the different departments, whenever they shall deem such division into departments advisable; *provided*, there shall be such means for all such departments, and if not, then in the order in which they are herein named, excepting the infant school, which shall not be considered as taking precedence of any other department; *provided, also*, that the infant department shall not be established in any district having a school population of less than three hundred children. Fourth—To suspend or expel, from any public school within their

district, with the advice of the teachers, any pupil who will not submit to the reasonable and ordinary rules of order and discipline therein, and in any district having graded schools, to exclude from the primary department children under six years of age. Fifth—To apportion the school fund among the several schools within their district, in proportion to the average number of pupils attending such schools. Sixth—At the close of their official term, to deliver over their books of record, and all papers, books, blanks, documents, moneys, and all other property in their hands, as such Trustees, to their successors in office, and take their receipt for the same, which receipt shall be filed with the County Superintendent. *As amended, Stats. 1879, 48.*

Consolidation of Schools—Applies to Certain Counties.

1299. SEC. 30. The School Trustees shall also have power: First—To unite two contiguous school districts in the same county or in adjoining counties, and to establish a union school, to be supported out of the funds belonging to their respective districts, and a school thus established shall be governed by a joint board composed of the Trustees of the combining districts. Second—To make arrangements with the Trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school. The School Trustees of any district shall transfer to an adjoining district any child, together with all school moneys due by apportionment to such child, whenever the parent or guardian shall present a written request, accompanied by a written permit from the Board of School Trustees of the adjoining district. The provisions of this Act shall only apply to counties polling not less than twenty-five hundred votes at the last preceding general election. *As amended, Stats. 1891, 99.*

Schulz v. Sweeney, 24 Nev.

District Tax to Be Levied, When.

1300. SEC. 31. When the state and county money to which any district is entitled is not sufficient to keep a school open in such district for at least six months in each year, it is hereby made the duty of the Trustees of each district to levy, and they shall levy, a direct tax upon the taxable property in such district, sufficient to raise an amount which, together with the state and county money to which such district is entitled, will keep a school open six months in each year; and such tax shall be assessed, equalized, and collected in the manner prescribed for assessing, equalizing, and collecting taxes voted for furnishing additional school facilities, in sections thirty-five and thirty-six of this Act. The taxes so levied shall include a sum sufficient to pay the cost of assessing and collecting.

Census Marshal, Duties Of.

1301. SEC. 32. Section thirty-two is hereby amended to read as follows: (SEC. 1.) It is the duty of the Census Marshal: First—To take annually, between the first and thirty-first days of May, inclusive, a census of all children under eighteen years of age and over six years, who are residents of his district on the first day of May. Second—To report the result of his labors to the County Superintendent of Schools on or before the fifteenth day of June in each year. Third—He shall, when practicable, visit each habitation, home, residence, domicile, or place of abode in his district, and by actual observation and investigation enumerate the census children of the same.

Must Report to Each County Superintendent.

1302. (SEC. 2.) Whenever a district is found lying partly in two adjoining counties, the Census Marshal must report to each County Superintendent the number of children in each county.

What Report Must Show.

1303. (SEC. 3.) His report must be made under oath, upon blanks furnished by the Superintendent of Public Instruction, and must show: First—The number, age, sex, color, and nationality of the children listed. Second—The name of the parents or guardians of said children. Third—Such other facts as the Superintendent of Public Instruction may designate. Fourth—The Census Marshal shall have power to administer oath to parents or guardians. Fifth—If at any time the County Superintendent has reason to believe that a correct report has not been returned, he may appoint a Census Marshal, have the census retaken, and the compensation for the same shall be audited by the County Commissioners, and paid out of the county general fund.

Children Included.

1304. (SEC. 4.) He must include in his report all children of the district that are absent attending institutions of learning, and whose parents or guardians are residents of the district.

Children Not Included.

1305. (SEC. 5.) He must not include in his report non-resident children who are attending in his district institutions of learning, benevolent institutions, such as deaf and dumb, blind, and orphan asylums, nor any other children not actually residing in his district.

Compensation of Marshal.

1306. (SEC. 6.) The compensation of the Census Marshal must be audited by the County Commissioners, and paid as other claims out of the general fund of the county.

Neglect of Duty Punished.

1307. (SEC. 7.) If the Census Marshal neglect or refuse to make his report at the time and in the manner herein required, and to perform any other duty devolving upon him, he must be deemed guilty of a misdemeanor, and on conviction, be punished by a fine in any amount not exceeding one hundred dollars or imprisonment not exceeding ten days. *As amended, Stats. 1867, 94; 1869, 172; 1873, 60; 1885, 108.*

Payment of Teachers Forbidden in Certain Cases.

1308. SEC. 33. No teacher shall be entitled to receive any portion of the public school moneys as compensation for services rendered, unless such teacher shall have been legally employed by the Board of Trustees, nor unless such teacher shall have had a certificate from the State Board of Examination, or from the County Board of Examination, in full force and effect, nor unless such teacher shall have made a full and correct report, in the form and manner prescribed by law, to the County Superintendent and to the Board of School Trustees.

Register of Scholars to Be Kept.

1309. SEC. 34. All teachers of public schools shall keep a register of all the scholars attending such school, their ages, daily attendance, and time of continuance at school, and such further statistics as may be required by the Superintendent of Public Instruction, and shall deliver such register, at the close of their term of employment, to the Board of Trustees of their district.

Election to Raise School Tax to Be Called—How Called—Election Judges to Be Appointed—The Ballot—Equalization—Taxes Constitute a Lien.

1310. SEC. 35. The Board of Trustees of any school district may, when in their judgment it is advisable, call an election and submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to keep any school or schools in such district open for a longer period than the ordinary funds will allow, or for building an additional school house or houses or for any two or all of these purposes.

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Election to Raise School Tax to Be Called—How Called—Election Judges to Be Appointed—The Ballot—Equalization—Taxes Constitute a Lien.

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Such election shall be called by posting notices in three of the most public places in the district for twenty days, and also if there be a newspaper in the county, by advertisement therein once a week for three weeks. Said notice shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The Trustees shall appoint three judges to conduct the election, and it shall be held in all other respects as nearly as practicable in conformity with the general election law. At such election the ballot shall contain the words, "Tax—Yes," or "Tax—No." If a majority of the votes cast are "Tax—Yes," the officers of the election shall certify the fact to the County Commissioners, together with a statement of the amount of money proposed to be raised, who shall ascertain the necessary percentage on the property of said district as shown by the last assessment made thereof after equalization, to raise the amount of money voted, and shall add it to the next county tax to be collected on the property aforesaid; and the same shall be paid into the county treasury as a special deposit in favor of said school district, to be drawn in the same manner as other school moneys; *provided*, if in any school district the School Trustees shall certify to the County Commissioners that the state and county money to which any district is entitled is not sufficient to keep school open in such district up to the date when the state and county taxes shall become due, the tax provided for in this section shall be due and payable to the Assessor of such county in which the tax is levied, immediately after he shall make the assessment and demand for payment of the tax; *provided*, the owner of the property shall, if he deem the assessment too high, have the privilege of submitting the assessment to the Board of County Commissioners for equalization within ten days after demand made for payment of the tax, and the County Commissioners, within five days after complaint made to them, shall meet and determine the correct valuation of the property assessed, and may change the same by adding to, or deducting from, the sum fixed either by the owner or Assessor, and upon notice to the owner of the result of their equalization, the tax shall be immediately payable to the Assessor, and if not paid shall become delinquent; and all taxes so assessed as in this Act provided, shall constitute a lien on the property charged therewith, from the date of the levy thereof by the County Commissioners, or entry thereof on the assessment roll by the County Auditor, until the same are paid, and thereafter if allowed to become delinquent shall be enforced in the same manner as now provided by law for the collection of state and county taxes. *As amended, Stats. 1869, 172: 1885, 52.*

State v. Yellow Jacket S. M. Co., 5 Nev. 415.

County Auditor to Enter Tax on Assessment Roll, When.

1311. SEC. 36. If for any reason said tax is not added to the county tax by the County Commissioners, the County Auditor shall enter it on the assessment roll, to be charged against the property of that district, on application from the Trustees of said district. *As amended, Stats. 1869, 173.*

Taxes a Lien.

1312. SEC. 37. All taxes assessed as in this Act provided shall constitute a lien on the property charged therewith, from the date of the levy thereof by the County Commissioners, or entry thereof on the assessment roll by the County Auditor, until the same are paid, and their payment, if allowed to become delinquent, shall be enforced in the same manner. *As amended, Stats. 1869, 172.*

Rate Bills of Tuition.

1313. SEC. 38. After a school shall have been maintained free to all pupils six months of the current school year, the Trustees of any district shall have power, at their discretion, to assess such rate bills of tuition as they may deem necessary for the payment of teachers' salaries, in addition to the public moneys of such district. Said rate bills of tuition shall be made out by said Board of

Trustees against all persons sending children to school, in proportion to the number of children sent, and the time of attendance of said children; and the Board of Trustees shall exempt such indigent persons from the payment of such rate bills as they may consider entitled to such exemption. Any person refusing or neglecting to pay said bills shall be excluded from the benefits of said school, in such manner as the Board of Trustees, with the advice and consent of the public school teachers, may determine. *As amended, Stats. 1869, 173.*

Commissioners Empowered to Create New School Districts.

1314. SEC. 39. The Board of County Commissioners of the several counties of this state are hereby authorized and empowered to create new school districts, change the boundaries of school districts heretofore established, or abolish the same whenever in their judgment it shall be for the best interests of the common schools so to do; *provided*, that the boundaries of any school district shall not be changed nor shall any school district with the legal number of school children within said district be abolished for the purpose of joining or consolidating said school district with another school district unless a petition signed by at least three-fifths of the residents of said district be presented to said Board of County Commissioners praying for the change in the boundaries or for the abolishment of said district; *provided further*, that when a new school district is organized school shall be commenced within one hundred and twenty (120) days from the action of the Board of County Commissioners creating such new school district, and if school shall not be commenced within the said one hundred and twenty days (120) in the said district, then such action shall become void and no such district shall exist; *and provided further*, that no district organized under the provisions of this Act after its passage shall exceed in size sixteen (16) miles square. *As amended, Stats. 1869, 174; 1881, 90; 1885, 114; 1891, 51; 1893, 87; 1895, 43.*

Property Exempt from Taxation and Execution.

1315. SEC. 40. All lots, buildings, or other school property owned by any district, town, or city, and devoted to public school purposes, shall be and the same are hereby exempted from taxation and from sale on any execution, or other writ or order, in the nature of an execution. *As amended, Stats. 1867, 94.*

County Superintendent to Appoint Board of Examiners—Shall Grant Certificates—Applicant Must Pass Satisfactory Examination.

1316. SEC. 41. The County Superintendent shall appoint two competent persons who with himself shall be and constitute a Board of Examination, of which he shall be Chairman. Said board shall be constituted for the purpose of examining applicants for teachers' certificates and granting certificates of qualification for teaching in the public schools. They shall hold examinations at such times as may be provided by law, and be governed by such rules and regulations as the State Board of Education may from time to time direct. They shall grant certificates, except as hereinafter provided, to such persons only as shall pass a satisfactory examination. The certificate so granted shall remain in force as specified in this section, unless revoked for incompetency, immorality or gross neglect of duty. Said board shall have power to grant certificates of the following grades: High school grade, for teaching a high school, which shall be good for four years; grammar grade, for teaching unclassified and grammar schools, which shall be good for three years; primary grade, for teaching a primary school, which shall be good for two years. High school and grammar certificates shall entitle the holders to teach in high schools and grammar schools respectively; a primary certificate shall not entitle the holder to teach any class or classes pursuing high school branches. The certificate provided for in this section shall be issued to such persons only as pass a satisfactory examination in the branches of studies pursued in each specified grade of the public schools, and such additional studies as the State Board of Education may direct, and shall

have given evidence of good moral character and of fitness for teaching. The certificate shall be signed by a majority of the Board of Examination. The Board of Examination shall have power to renew the high school or grammar certificate of any person successfully teaching in the county; *provided*, that the certificates of no one not thus engaged shall be renewed. County certificates made valid for all the counties of this state shall be accepted in all the counties. *As amended, Stats. 1867, 94; 1869, 174; 1873, 161; 1895, 87.*

SEC. 42 (powers of State Board of Education) superseded, Sec. 1346.

School Moneys Not to Be Used for Sectarian Purposes.

1317. SEC. 43. No portion of the public school funds, nor of money raised by state tax, or specially appropriated for the support of public schools, shall be devoted to any other object or purpose; nor shall any portion of the public school funds, nor of money raised by state tax for the support of public schools, be in any way segregated, divided, or set apart for the use or benefit of any sectarian or secular society or association. *As amended, Stats. 1867, 95; 1877, 70.*

State Money to Be Used for What.

1318. SEC. 44. The school moneys distributed to the various counties of this state, from the state school funds, shall not be used for any other purpose than the payment of qualified teachers under this Act, and no portion of said funds shall, either directly or indirectly, be paid for the erection of school houses, the use of school rooms, furniture, or any other contingent expenses of public schools.

County School Tax—Limit.

1319. SEC. 45. The Board of County Commissioners of each county shall annually, at the time of levying other county taxes, levy a county school tax, not to exceed fifty cents, nor less than fifteen cents, on each one hundred dollars' valuation of taxable property, which tax shall be added to the county tax, and collected in the same manner, and paid into the county treasury as a special deposit, to be drawn in the same manner as other public school moneys; and should said County Commissioners fail or neglect to levy said tax as required, it shall be the duty of the County Auditor to add such tax as the County Superintendent of Public Schools may deem sufficient, between the limits of fifteen (15) and fifty (50) cents on each one hundred dollars' valuation of taxable property in the county, to the assessment roll, to be collected as specified in this section. *As amended, Stats. 1873, 162.*

No Fees.

1320. SEC. 46. No Tax Collector or County Treasurer shall receive any fees or compensation whatever for collecting, receiving, keeping, transporting, or disbursing any school moneys (except what may be specially provided for in this Act); but the whole moneys collected as provided in section forty-five of this Act shall be paid to the County Treasurer and disbursed by him according to law. *As amended, Stats. 1867, 95.*

How Money May be Used.

1321. SEC. 47. The Board of Trustees, or Board of Education, of each city, town, and district, may use the moneys from the county school funds to purchase sites, build or rent school houses, to purchase libraries, and to pay teachers or contingent expenses, as they may deem proper.

When District Not Entitled to Receive Money—New District Entitled to Portion of Money.

1322. SEC. 48. No school district, except when newly organized, shall be entitled to receive any portion of the public school money, in which there shall not have been taught a public school for at least three months within the year ending the last day of August previous; and no public school shall receive any moneys, benefits, or immunities under the provisions of this Act, unless such school shall have been instructed by a teacher or teachers, duly examined,

approved, and employed by legal authority, as herein provided. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when a school was actually commenced in such new district; and the County Superintendent shall divide and apportion such remaining moneys according to the number of census children resident in each district, for which purpose he may order a census to be taken, the expenses of which shall be met as provided in section thirty-two. *As amended, Stats. 1869, 174.*

Sectarian Books Prohibited.

1323. SEC. 49. No books, tracts, or papers of a sectarian or denominational character, shall be used or introduced in any school established under the provisions of this Act; nor shall sectarian or denominational doctrines be taught therein; nor shall any school whatever receive any of the public school funds which has not been taught in accordance with the provisions of this Act.

School Month, What—Compensation of Teacher.

1324. SEC. 50. Except when special agreement is made, a school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor. *As amended, Stats. 1867, 95; 1873, 162.*

School Year.

1325. SEC. 51. The public school year shall commence on the first day of September, and shall end on the last day of August.

Printing.

1326. SEC. 52. Any printing required under this Act shall be executed in the form and manner and at the prices of other state printing, and shall be paid for in like manner out of the general fund.

Oaths, Who to Administer.

1327. SEC. 53. The State Superintendent of Public Instruction and the County Superintendent of Public Schools are hereby authorized to administer the oath (or affirmation) to teachers, and all other oaths (or affirmations) relating to public schools.

State Tax for School Purposes.

1328. SEC. 54. An ad valorem tax of one-half of one mill on the dollar of all taxable property in the state is hereby levied and directed to be collected and paid in the same manner as other state taxes are required to be paid; and said tax shall be known as the state school tax, and the Board of Commissioners of the several counties shall, annually, at the same time other state taxes are levied, add this to the other taxes provided by law to be levied and collected; and it shall be annually collected at the same time and in the same manner as other state taxes are collected, and if, from any reason whatever, in any year, said taxes are not levied as herein required by the Board of County Commissioners, the County Auditor shall enter them on the assessment roll, as required by law for other taxes. All moneys derived from the tax herein levied shall be paid into the state school fund, and be apportioned in the same manner as other money in that fund.

Five Per Cent State Tax Set Apart.

1329. SEC. 55. There shall be set apart, semi-annually, five per cent of all moneys received as state tax, for school purposes; and such amount shall be distributed pro rata, and be paid according to the provisions of section fifteen of this Act.

Each Village to Constitute One District.

1330. SEC. 56. Each village, town, or incorporated city of this state shall

have given evidence of good moral character and of fitness for teaching. The certificate shall be signed by a majority of the Board of Examination. The Board of Examination shall have power to renew the high school or grammar certificate of any person successfully teaching in the county; *provided*, that the certificates of no one not thus engaged shall be renewed. County certificates made valid for all the counties of this state shall be accepted in all the counties. *As amended, Stats. 1867, 94; 1869, 174; 1873, 161; 1895, 87.*

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1328. SEC. 54. An ad valorem tax of one-half of one mill on the dollar of all taxable property in the state is hereby levied and directed to be collected and paid in the same manner as other state taxes are required to be paid; and said tax shall be known as the state school tax, and the Board of Commissioners of the several counties shall, annually, at the same time other state taxes are levied, add this to the other taxes provided by law to be levied and collected; and it shall be annually collected at the same time and in the same manner as other state taxes are collected, and if, from any reason whatever, in any year, said taxes are not levied as herein required by the Board of County Commissioners, the County Auditor shall enter them on the assessment roll, as required by law for other taxes. All moneys derived from the tax herein levied shall be paid into the state school fund, and be apportioned in the same manner as other money in that fund.

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Each Village to Constitute One District.

1330. SEC. 56. Each village, town, or incorporated city of this state shall

constitute but one school district, and the public schools therein shall be under the supervision and control of the Trustees thereof; *provided*, in all such villages, towns, and cities, wherein the aggregate number of registered votes thereof at the last previous general election exceeds fifteen hundred, there shall be elected five instead of only three Trustees. *As amended, Stats. 1867, 95; 1869, 175.*

Acts Repealed.

SEC. 57. An Act entitled "An Act in relation to the payment of school moneys by County Treasurers," approved February twenty-seven, eighteen hundred and seventy-one [p. 78]; also, an Act entitled "An Act concerning teachers of common schools in this state," approved January twenty-sixth, eighteen hundred and sixty-five [p. 119], together with all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed. *As amended, Stats. 1873, 156.*

Stoutmeyer v. Duffy, 7 Nev. 342.

An Act supplementary to an Act entitled "An Act to provide for the maintenance and supervision of public schools," approved March twentieth, eighteen hundred and sixty-five; approved March eighth, eighteen hundred and sixty-seven; approved March fifth, eighteen hundred and sixty-nine; approved March seventh, eighteen hundred and seventy-three; approved March fifth, eighteen hundred and seventy-seven.

Approved February 24, 1879, 47.

School Districts Formed—Proviso.

1331. SECTION 1. School districts may be formed of parts of two or more counties; *provided*, there are not in such part of either county the number of heads of families required by law for the formation of school districts.

County Commissioners to Appoint Trustees—Successors, When Chosen.

1332. SEC. 2. When the petition for such school shall be granted and the district established, the County Commissioners of each county in which parts of such district is located shall appoint three Trustees, two from the county having, at the time of such application, the largest number of census children in its part of said district, their successors to be chosen at the next general election on the same basis.

Apportionment of Moneys.

1333. SEC. 3. The County Superintendents of Public Schools of each county out of which such school districts may be formed, shall apportion the public school moneys in proportion to the number of census children of school age residing in such districts in their respective counties, as provided by law, upon the basis of the fractional part of the district contained in said county for every teacher assigned it, upon the basis of one hundred census children or fraction thereof.

Schulz v. Sweeney, 24 Nev.

An Act to provide for the safe keeping of the securities of the state school fund.

Approved February 21, 1871, 66.

Treasurer to Be Custodian of Funds.

1334. SECTION 1. From and after the passage of this Act, the State Treasurer shall be the legal custodian of all state and national securities in which the moneys of the state (irreducible) school fund of the State of Nevada are or may hereafter be invested, and for their safe keeping he shall be liable on his official bond.

Securities to Be Passed Over.

1335. SEC. 2. The State Board of Education shall immediately pass over to the State Treasurer all moneys and securities now in their custody, taking from

him duplicate receipts therefor; one of which they shall file with the Controller of State, who shall thereupon charge the same to the State Treasurer.

Payment of Coupons.

1336. SEC. 3. When due (after procuring the Controller's warrant for the amount thereof), the State Treasurer shall, in the presence of the State Board of Education, or a majority of the same, cut off and pay the coupon on such state securities as may be in said fund, and place the moneys so paid in the general (distributing) school fund of the state, and keep a correct account thereof on his books.

State School Fund, How Invested.

1337. SEC. 4. It is hereby made the duty of the State Controller, quarterly, to notify the State Board of Education of the amount of money in the state school fund, and whenever there shall be a sum in said fund sufficient for investment, said board shall direct the State Treasurer to negotiate for investment of the same in United States securities, or in the bonds of this state, or in the bonds of other states, at the lowest purchasable rates, and the board shall then draw their order upon the Controller in favor of the State Treasurer for the amount to be invested. Said Controller shall thereupon draw his warrant as directed, and the State Treasurer shall complete the purchase of the securities negotiated for by him in pursuance of this Act; *provided*, that before any such investment of said school moneys as is contemplated by the provisions of this Act is made, said Board of Education shall require of the Attorney-General of this state his legal opinion as to the validity of any Act or Acts of any state under which said bonds are issued and in which said Board of Education are about to make an investment; *and provided, further*, that in no case shall any bonds be purchased as herein provided without said Board of Education making due and diligent inquiry as to the financial standing and responsibility of the state or states whose bonds it is proposed to purchase. *As amended, Stats. 1887, 17; 1891, 14.*

An Act to provide for the maintenance and supervision of public schools.

Approved March 9, 1887, 138.

Apportionment of School Moneys by County Superintendent—When and How Made.

1338. SECTION 1. It shall be the duty of the County Superintendent of Public Schools, upon receiving notice from the County Treasurer and the County Auditor as provided in this Act, to apportion the public school moneys in the county treasury among the several school districts of his county, as follows: First, he must ascertain the number of teachers each district is entitled to, by calculating one teacher for every seventy-five census children or fraction thereof as shown by next preceding school census; second, he must ascertain the total number of teachers for the county by adding together the number of teachers assigned to the several districts upon the basis of one teacher to each seventy-five census children or fraction thereof; third, forty per cent of the amount of the apportionment from the state and county school fund shall be apportioned equally to each district for every teacher assigned it, upon the basis of seventy-five census children or fraction thereof; fourth, all school moneys remaining on hand after apportioning forty per cent of the state and county apportionment equally to each district for every teacher assigned it upon the basis of seventy-five census children or fraction thereof, must be apportioned to the several districts in proportion to the number of children between the ages of six and eighteen years, as returned by the School Trustees and Census Marshals, and to forthwith notify the County Treasurer, County Auditor and the School Trustees in writing of such apportionment in detail. He shall make such apportionment on the first Monday in January of each year, and quarterly thereafter. He shall have power, and it shall

be his duty, to draw his order on the County Auditor in favor of the Trustees of any school district in his county for any bill signed by said Trustees and authorized by this Act; *provided*, that such order shall not be drawn except upon presentation of an itemized account, which shall remain on file in his office, and until full and correct returns have been made to him as required by law; *and provided*, further, that, if in the opinion of the Superintendent, any bill contains an exorbitant or unwarranted charge, he may refuse to draw his order until ordered to do so by the Board of County Commissioners, who shall act as auditors upon all bills rejected by the County Superintendent. No order shall be drawn in favor of any school district by the County Superintendent upon the Auditor, unless there be cash in the treasury at the time to the credit of said district. It shall be the duty of the County Auditor to draw his warrant upon the County Treasurer for the amount of any such order of the County Superintendent upon the presentation of the same to him, if there be cash in the treasury to the credit of the particular fund on which he is called upon to draw. No charge for issuing said warrant shall be made by the County Auditor. *As amended, Stats. 1889, 38.*

SECS. 2 to 11 (election of School Trustees) superseded, SECS. 1763-1781.

One School, When—County Superintendent to Designate.

1339. SEC. 12. In any neighborhood or community containing not more than twenty school census children and where one school can accommodate all the school census children therein, although the most distant school census child resides not to exceed five miles from the school house, but one school shall receive public school money, and the County Superintendent of Public Schools shall decide the school house in which schools shall be kept open.

Must Be Five School Children.

1340. SEC. 13. No school district shall be entitled to receive moneys from the county fund unless there shall be residing in the district at least five school census children.

Repeal.

1341. SEC. 14. All Acts and parts of Acts in conflict with this Act are hereby repealed.

Oath to Be Taken and Subscribed by Teacher.

1342. SEC. 15. Each and every teacher employed in this state whose compensation is payable out of public funds, shall take and subscribe to the oath as prescribed by the fifteenth article of the state constitution, before entering upon the discharge of the duties of such teacher; such oath, when so taken and subscribed to, shall, if that of teacher in the state university, be filed in the office of the Board of Regents, if of any other class of teachers, the same shall be filed in the office of the County Superintendent of Schools.

An Act to define the constitution, organization, powers and duties of the State Board of Education, and matters properly connected therewith.

Approved March 16, 1895, 81.

State Board of Education.

1343. SECTION 1. The State Board of Education shall consist of the Governor, the State Superintendent of Public Instruction and the President of the University.

Officers of Board.

1344. SEC. 2. The Governor is the President, and the Superintendent of Public Instruction the Secretary of the Board.

Time of Meeting.

1345. SEC. 3. The board shall meet at the call of the Secretary, but shall hold at least two meetings a year.

Duties of Board of Education—Uniform Series of Text Books to Be Adopted, etc.—Other Text Books.

1346. SEC. 4. The powers and duties of the board shall be as follows:

First—To prescribe and cause to be adopted a uniform series of text books in the principal studies pursued in the public schools, to wit: Reading, writing, arithmetic, spelling, language, grammar, geography, history of the United States, physiology and drawing. Special prominence shall be given in all public schools to the effect of alcoholic stimulants and of narcotics upon the human system. No school district shall be entitled to receive its pro rata of the public school money unless such text books on the above subjects as have been prescribed by the State Board of Education shall be used in all the public schools pursuing subjects covered by said text books; and text books shall not be changed oftener than once in four years. For the schools in which the Trustees may direct instruction to be given in additional branches, there shall also be prescribed text books in algebra, geometry, physics, astronomy, physical geography, chemistry, Latin, rhetoric, literature, English history, general history, civics, geology, bookkeeping and music.

Newnham v. State Board of Education, 18 Nev. 173.

Second—To adopt a uniform system of rules for state and county examinations.

Third—To prescribe and cause to be adopted the course of study in the public schools.

Fourth—To recommend a list of books for district libraries.

Fifth—To grant, first, life diplomas; second, state educational diplomas, valid for six years; third, state high school certificates, unlimited to those graduates from the school of liberal arts of the Nevada State University who have elected at least two university courses in pedagogics; fourth, state high school certificates, valid for five years, to graduates of the Nevada State Normal School who have completed the four years' course of study; fifth, state grammar school certificates, valid for five years, to graduates of the Nevada State Normal School who have completed the three years' course of study; sixth, to issue, upon satisfactory showing, a temporary certificate which shall authorize the holder thereof to teach in the specified district for which the temporary certificate may be granted. This certificate shall not continue in force beyond the next semi-annual examination after the issuing of said certificate; *provided, however*, that if satisfactory evidence is furnished of the inability of such holder to attend the said examination, by reason of sickness or other unavoidable cause, the board may issue at their discretion a second temporary certificate.

Sixth—To revoke for immoral conduct or evident unfitness for teaching any state diploma or any state or county certificate.

Seventh—To have done by the State Printer any printing required by the board, such as the proceedings of the state teachers' institute, circulars of information to school officers or teachers, and blank forms.

Eighth—To adopt and use in authentication of its acts an official seal.

Ninth—To keep a record of its proceedings, which shall be published biennially in the report of the Superintendent of Public Instruction.

Tenth—State educational diplomas may be issued to such persons only as have held a state certificate of high school grade or a county certificate of high school grade for at least one year and shall furnish satisfactory evidence of having been successfully engaged in teaching at least forty-five months in the public schools, twenty months of which must have been in Nevada. Every application for an educational diploma must be accompanied by a certified copy of a resolution adopted by the Board of School Trustees of the district in which the applicant has taught at least one year. An educational diploma shall entitle the holder thereof to teach in any public school in the State of Nevada without further examination.

Eleventh—Life diplomas may be issued on all and the same conditions as educational diplomas, except that the applicant must furnish satisfactory evidence of having been successfully engaged in teaching seventy-two months in public schools, twenty-four of which must have been in Nevada. A life diploma shall entitle the holder thereof to teach in any school in the State of Nevada without any further examination.

Twelfth—To the graduates of the Nevada State Normal School who hold state high school certificates, the State Board of Education shall grant a life diploma of high school grade when said graduates shall have completed at least forty-five months of successful instruction in public schools. To all graduates of the Nevada State Normal School, who hold a state grammar school certificate, the State Board of Education shall grant a life diploma of the grammar grade when said graduates shall have completed at least forty-five months of successful instruction in public schools. The State Board of Education shall also issue a diploma of the grammar grade to all persons who hold in full force and effect, and who have held for at least one year, a county or a state certificate of the grammar grade, and who shall present satisfactory evidence of having been successfully engaged in teaching in public schools for a period of seventy-two months, twenty-four of which must have been in the public schools of the State of Nevada. A grammar grade life diploma shall entitle the holder thereof to teach in any primary or grammar school in the state without further examination.

Thirteenth—To have appellate jurisdiction over all questions relating to schools and referred to County Boards of Examination.

Fourteenth—To prescribe in what studies shall be examined an applicant for a county high school certificate valid for four years; an applicant for a county grammar school certificate valid for three years, and an applicant for a county primary certificate valid for two years.

Fifteenth—Upon the recommendation of the County Superintendent of the county in which the applicant resides, the State Board of Education may renew a high school or grammar certificate, or make it valid in any county in the State of Nevada.

Sixteenth—Upon presentation to them of a life certificate of any state or of the diploma of any state normal school, the board may grant a state certificate of equivalent grade without examination, valid for three years or less; *provided*, that since the issuing of such certificate or diploma the applicant has been continuously or successfully engaged in teaching.

Seventeenth—Graduates of the Nevada State Normal School who have taught successfully for the time specified in this Act, on or before January 1, 1900, shall be entitled to life diplomas of undesignated grade.

Eighteenth—All Acts and parts of Acts in conflict with this Act, are hereby repealed. *As amended, Stats. 1899, 95.*

An Act to empower the State Board of Education to grant life diplomas to residents of Nevada who have taught ten years.

Approved March 1, 1897, 29.

Who Entitled to Receive Diploma.

1347. SECTION 1. The State Board of Education shall grant a life diploma to any resident of the State of Nevada who shall present evidence of having taught successfully and continuously in the public schools of the State of Nevada for a period of ten years.

Grade of Diploma.

1348. SEC. 2. A life diploma granted under the first section of this Act shall

be of the same grade as the certificate held by the applicant at the time of application for the diploma, and shall entitle the holder thereof to teach in any school in the State of Nevada of a grade corresponding to the grade of the certificate upon which the life diploma may be granted.

An Act to empower the State Board of Education to grant life diplomas to residents of the State of Nevada who have received the degree of bachelor of arts.

Approved March 8, 1897, 61.

Who Entitled to Life Diplomas.

1349. SECTION 1. The State Board of Education shall grant a life diploma to any resident of this state of good moral character and who shall present satisfactory evidence of having taken a course in pedagogics and received the degree of bachelor of arts, from any university or college situated within the United States and of reputable standing; *provided*, such person shall have been an actual resident of the State of Nevada for at least five years next preceding his or her having entered the university or college in which the course in pedagogics was taken and from which the degree of bachelor of arts was received.

An Act to authorize the State Board of Education to issue special certificates to teach.

Approved March 14, 1899, 87.

What Certificates Are For.

1350. SECTION 1. The State Board of Education, or a majority of said board, are hereby authorized, and it shall be their duty, to issue special certificates, good for two years, authorizing persons to teach any of the following subjects, to wit: Music, drawing, penmanship, kindergarten work and any of the foreign languages, in the public schools of this state, when employed by the Trustees of any school district for that purpose; *provided*, that a person applying for a certificate to teach any of the above subjects, shall first satisfy, in such a manner as they shall deem proper, a majority of said Board of Education that he or she is thoroughly qualified to teach that subject.

Misdemeanor to Draw Voucher, When.

1351. SEC. 2. It shall be a misdemeanor punishable by a fine not to exceed one hundred dollars for any School Trustee to draw a voucher upon any school fund within this state in payment for services in teaching any branches of study not authorized by the certificate held by the teacher.

An Act to provide for uniform examinations for teachers' certificates, and other matters properly connected therewith.

Approved March 6, 1893, 102.

Examinations for Teachers Shall Be Semi-Annual.

1352. SECTION 1. Examinations for teachers' certificates in this state shall be held in the several counties semi-annually, beginning on the second Monday in January and July, and continuing not more than three days at any one examination; *provided*, that the interest of the schools in any county requires such examinations. Examinations shall not be held at other times than are herein specified, except with the consent and authorization of the State Board of Education. *As amended, Stats. 1895, 15.*

Questions, How Prepared.

1353. SEC. 2. The questions used for written work in teachers' examinations shall be prepared by the State Board of Education, and shall be uniform through-

out this state. Such examination questions shall be forwarded to the various County Superintendents by the State Superintendent of Public Instruction, so as to reach their destination on or before the dates hereinbefore specified. Such questions shall be sent under seal of the State Board of Education, and shall not be opened by County Superintendents or others until the first day of the examination for which they are prepared. Questions shall be used in the order directed by the State Board of Education.

Disposition of Examination Papers.

1354. SEC. 3. Examination papers of applicants shall be graded by the County Boards of Examination, and shall be kept on file in the offices of the County Superintendents for such time as the State Board of Education may direct. All applicants shall reach such standing as the state board may require in written examinations in order to obtain a certificate. The County Boards of Examination may give such oral examinations additional to the written as they may deem proper, and they shall keep an accurate record of standings made in both written and oral examinations.

Duties of the State Board of Education.

1355. SEC. 4. The State Board of Education shall not indorse county certificates submitted to them for such purpose for use in other counties until the State Superintendent is satisfied from an inspection of the examination papers of the person holding such certificate that such indorsement should be made. The County Superintendent who recommends to the State Board of Education that a certificate should be indorsed or made good for other counties than his own must forward to the State Superintendent, with such recommendation, the original papers of the applicant, with the gradings given in both written and oral work. The certificate so submitted of any person whose papers are found deficient in merit shall be canceled by the State Board of Education, and the County Superintendent of the county in which it was issued shall be immediately notified of such action.

No Certificate Except on Examination.

1356. SEC. 5. No certificate shall be granted by any County Board of Examination without an examination of the applicant in accordance with the regulations of the State Board of Education, except to persons holding diplomas of graduation from state normal schools or from colleges and universities of approved standing as educational institutions.

Members of Boards, How Paid.

1357. SEC. 6. Members of County Boards of Examination shall be paid from the general school funds of their respective counties such reasonable compensation as the County Superintendent shall allow; *provided*, that such compensation shall not exceed five dollars per day. County Superintendents are hereby authorized to draw their orders upon the County Auditors of their respective counties in payment thereof. No County Superintendent shall receive for his services in examining teachers any compensation additional to his salary.

An Act to provide for the issuing of teachers' certificates by County Boards of Examination and other matters properly connected therewith.

Approved March 20, 1895, 110.

County Primary School Certificate.

1358. SECTION 1. The county primary school certificate, good for two years, shall be issued upon satisfactory examination in the following subjects, and shall entitle the holder to teach in any school in which only primary branches are taught: Orthography, reading, grammar, written arithmetic, mental arithmetic,

penmanship, physiology, history of the United States, civil government, geography, current news, drawing, theory and practice of teaching, and, at the discretion of the State Board of Education, music, and the elements of chemistry and physics.

County Grammar School Certificate.

1359. SEC. 2. The county grammar school certificate, good for three years, shall be issued upon satisfactory examination in the following subjects and shall entitle the holder to teach in primary, grammar, or unclassified schools: All the subjects designated for county primary school certificates, and in addition thereto, algebra, the first and second books of plane geometry, English history, bookkeeping, physical geography, physics, chemistry, and methods of teaching.

County High School Certificate.

1360. SEC. 3. The county high school certificate, good for four years, shall entitle the holder to teach in any school, and shall be issued upon satisfactory examination in all the subjects mentioned in sections one and two of this Act, and, in addition thereto, botany, Latin, general history, English literature, plane geometry, astronomy, rhetoric, civil government, and the history and methods of teaching.

Studies Required to Be Taken.

1361. SEC. 4. Applicants who have taught successfully under any grade of certificate issued under this Act, shall, when applying for the next higher grade, be required to take only the studies of that grade; *provided*, that any person, holding a county primary school certificate, in applying for a county grammar school certificate, need take only the additional branches named in section two of this Act.

No Certificate to Persons Under Sixteen Years of Age.

1362. SEC. 5. No certificate, authorized by this Act, shall be issued to persons under sixteen years of age; nor shall any high school certificate be issued to any person who shall not have successfully taught at least twelve months.

Examinations Conducted by County Boards.

1363. SEC. 6. Examinations for certificates named in this Act shall be conducted by the County Boards of Examination under such rules and restrictions as the State Board of Education may prescribe.

Certificates Renewed.

1364. SEC. 7. The County Board of Examination may renew the certificate of any person successfully engaged in teaching in the county; *provided*, that after the year eighteen hundred and ninety-seven a primary school certificate shall not be subject to renewal.

Certificates of Equivalent Grade.

1365. SEC. 8. As the county certificates of the first and second grade, in force at the passage of this Act, expire, the County Board of Examination may issue, without examination, to the persons holding the same, certificates of equivalent grade as named in this Act; *provided*, that high school certificates shall be thus issued only to those teaching in high schools.

An Act relating to the duties of Census Marshals.

Approved March 22, 1897, 115.

Indian Children Not to Be Taken on Census.

1366. SECTION 1. The School Census Marshals in the various school districts of the state shall not include in their enumeration of children between the ages of six and eighteen years any Indian children not attending public school.

out this state. Such examination questions shall be forwarded to the various County Superintendents by the State Superintendent of Public Instruction, so as to reach their destination on or before the dates hereinbefore specified. Such questions shall be sent under seal of the State Board of Education, and shall not be opened by County Superintendents or others until the first day of the examination for which they are prepared. Questions shall be used in the order directed by the State Board of Education.

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An Act relating to the duties of Census Marshals.

Approved March 22, 1897, 115.

Indian Children Not to Be Taken on Census.

1366. SECTION 1. The School Census Marshals in the various school districts of the state shall not include in their enumeration of children between the ages of six and eighteen years any Indian children not attending public school.

Penalty for Violation.

1367. SEC. 2. It shall be the duty of the Superintendent of Public Instruction and the various County Superintendents to cause the arrest and prosecution of any person who shall violate the provisions of this Act. And any person convicted of such violation shall be punished by a fine of not less than twenty (20) nor more than three hundred (300) dollars, or by imprisonment in the county jail for not less than ten nor more than sixty days, or by both such fine and imprisonment.

An Act to promote the progress and efficiency of the public schools by providing for state teachers' institutes.

Approved March 6, 1893, 106.

Teachers' Institute Provided.

1368. SECTION 1. The Superintendent of Public Instruction, by and with the consent of the State Board of Education, shall have power to convene two state teachers' institutes annually, in different sections of the state, and shall preside over and regulate the exercises of the same in pursuance of the provisions of this Act. Teachers who attend one such institute shall not be required to attend another in the same year. Sessions shall not be less than three days nor more than ten days.

Purpose of Institute.

1369. SEC. 2. The purpose of such institutes shall be to train and instruct the teachers of the state, so far as may be found necessary, in practical and scientific methods of work, to simplify and unify, so far as may be practicable, the courses of study in the public schools, and in general to raise the standard of educational work and qualification on the part of the teachers. Class work in common school branches shall be a prominent feature of all institute programmes. The State Superintendent shall have the power to engage such lecturers and instructors as he may deem advisable, to aid him in conducting the exercises.

Teachers Required to Attend.

1370. SEC. 3. All teachers shall be required to attend and participate in the proceedings of the institute held in the section of the state wherein they may be engaged in teaching, and without loss of salary for the time thus employed.

An Act permitting the establishment of county high schools in the various counties of this state, and providing for the construction, maintenance and management of the same.

Approved March 4, 1895, 23.

Majority of Votes Necessary.

1371. SECTION 1. There may be established in any county in this state a high school; *provided*, that at any general or special election held in said county after the passage of this Act, a majority of all the votes cast at such election, upon the proposition to establish a high school, shall be in favor of establishing and maintaining such high school at the expense of said county.

How Question to Be Voted On.

1372. SEC. 2. The Board of County Commissioners at any general election to be held in any county after the passage of this Act, upon the presentation of a petition signed by fifty or more qualified electors, taxpayers of said county, at any regular meeting of said board held not less than eight weeks before any general or special election, must make an order submitting the question of establishing, constructing, and maintaining a county high school to the qualified electors thereof. The Board of County Commissioners, upon the presentation of said petition, if they deem it expedient, may order a special election for said purpose.

Said election shall be conducted in the manner prescribed by law for conducting elections, and the ballots at such election shall have printed thereon the words "For a County High School" and the words "Against a County High School." The votes cast for and against said county high school at any election therefor, shall be counted and returns thereof made and canvassed in a manner provided for by law for counting, making returns, and canvassing the votes of a general election; *provided*, that the election officers appointed to conduct any special election held for said purpose, as required by law, shall perform all services required of them by law in holding and conducting such elections, without any fees or pay therefor.

Location and Building of School.

1373. SEC. 3. If the majority of all the votes cast on the proposition to establish a high school are in the affirmative it shall be the duty of the Board of County Commissioners, within thirty days after canvassing said vote, to locate the school in some suitable and convenient place in said county. The County Board of Commissioners, together with the County Board of Examiners, who shall be known as the County Board of Education, shall also at the same time estimate the cost of purchasing suitable grounds, erecting a building and furnishing the same for the accommodation of the school together with the cost of conducting such school for the next twelve months; *provided*, that the County Board of Education may rent suitable rooms for the accommodation of the school. If rooms can be obtained in the public school buildings in the place in which said school shall be located, such rooms shall be given the preference.

Special Tax to Be Levied by Board of County Commissioners.

1374. SEC. 4. When such estimate shall have been made, the Board of County Commissioners shall thereupon immediately proceed to levy a special tax upon all the assessable property of the county sufficient to raise the amount estimated as necessary for the purchase of suitable grounds, procuring plans and specifications, erecting a building, furnishing the same, fencing and ornamenting the grounds, and the cost of running said school for the following twelve months. Said tax shall be computed, entered on the tax roll, and collected in the same manner as other taxes are computed, entered and collected, and the amount so collected shall be deposited in the county treasury, and be known and designated as the "County High School Fund," and shall be drawn from the treasury as other moneys so deposited are drawn.

Building to Be Deeded to County Board of Education.

1375. SEC. 5. When the Board of County Commissioners shall have properly provided and completed the building, together with the necessary fencing of the grounds so purchased, they shall cause the same to be deeded to the County Board of Education, who shall hold the same in trust for the county.

County Boards of Education, How Elected—Vacancy, How Filled.

1376. SEC. 6. The County Boards of Education of such counties wherein a county high school has been or shall hereafter be established shall, after the expiration of the term of office of the County Superintendent of Schools now holding office in such counties wherein a county high school has been established, and after the expiration of the term of office of the County Superintendent of Schools holding office at the time of the establishment of a county high school in such counties wherein a county high school may hereafter be established, consist of three members, chosen as follows:

First—The County Superintendent of Schools of the county in which a county high school has been or shall be established shall be one member of the County Board of Education.

Second—At the regular biennial election to be held in November, 1900, there shall be elected two competent persons, one to serve two years and one to serve four years, and at each regular biennial election thereafter, there shall be elected

one person to serve four years. Each person elected, as hereinbefore provided, shall enter upon the duties of his office on the first Monday in July following his election, and shall hold office until his successor is elected and qualified; *provided*, that the two members appointed by the County Commissioners shall hold office until their successors are elected and qualified.

Third—If at any time a vacancy shall occur in the Board of Education on account of the death, resignation or removal of a member, it shall be the duty of the Board of County Commissioners of the county in which said school has been, or shall be established, to appoint a member to fill such vacancy for the unexpired term. *As amended, Stats. 1899, 28.*

Duties of County Board of Education.

1377. SEC. 7. It shall be the duty of the County Board of Education to furnish, annually, an estimate of the amount of money needed to pay all the necessary expenses of running said school; to adopt the necessary text books, to adopt and enforce a course of study for said school; to employ suitable teachers, janitors and other employees and discharge such employees when sufficient cause therefor shall exist; and to do any and all other things necessary to the proper conduct of the school. The course of study shall be such as will, when it is completed by the student, fit him for admission to the University of Nevada

County High School Fund.

1378. SEC. 8. It shall be the duty of the Board of County Commissioners to include in their annual tax levy the amount estimated by the County Board of Education as needed to pay the expenses of conducting the county high school; and such amount, when collected and paid into the county treasury, shall be known as the "County High School Fund," and may be drawn therefrom for the purpose of defraying the expenses of conducting said county high school, in the manner now provided by law for drawing money by School Trustees.

Who Shall Be Admitted.

1379. SEC. 9. All high schools shall be open for the admission of such pupils residing in the county as shall be able to pass the examination for admission, which examination shall be conducted by the County Board of Education and the Principal of the county high school.

An Act to compel children to attend school.

Approved February 25, 1873, 89.

All Children Between the Ages of Eight and Fourteen Years to Attend School.

1380. SECTION 1. Every parent, guardian, or other person in the State of Nevada, having control and charge of a child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school for a period of at least sixteen weeks in each school year, at least eight weeks of which shall be consecutive, unless such child or children are excused from such attendance by the Board of School Trustees of the school district in which such parents or guardians reside, upon it being shown to their satisfaction that the bodily or mental condition of such child or children has been such as to prevent his, her or their attendance at school, or application to study, for the period required, or that such child or children are taught in a private school, or at home, in such branches as are usually taught in a primary school, or have already acquired the ordinary branches of learning taught in the public school; *provided*, in case a public school shall not be taught for the period of sixteen weeks, or any part thereof, during the year, within two miles, by the nearest traveled road, of the residence of any person within the school district, he or she shall not be liable to the provisions of this Act.

Report of the Principal—Board to Make Demand on Parents—Action for Penalty.

1381. SEC. 2. It shall be the duty of the Board of School Trustees of each school district in the state, on or before the first Monday in September in each year, to furnish the Principal of each public school taught in such district with a list of all children, resident in the school district, between the ages of eight and fourteen years; said list to be taken from the report of the School Census Marshal. At the beginning of each school month thereafter it shall be the duty of the Principal of each school in such district to report to the Board of School Trustees of such district the names of all children attending school during the previous school month; when, if it shall appear, at the expiration of four school months, to the Board of School Trustees, that any parent, guardian, or other person having charge or control of any child or children, shall have failed to comply with the provisions of this Act, the Board shall cause demand to be made upon such parent, guardian, or other person, for the amount of the penalty hereinafter provided; when, if such parent, guardian, or other person shall neglect or refuse to pay the same within five days after the making of said demand, the board shall commence proceedings in the name of the school district for the recovery of the fine hereinafter provided, before any Justice of the Peace in the township in which said school district is located; or, if there shall be no Justice of the Peace therein, then before the nearest Justice of the Peace in the county.

Penalty for Non-Compliance With This Act.

1382. SEC. 3. Any parent, guardian, or other person having control or charge of any child or children, failing to comply with the provisions of this Act shall be liable to a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, nor less than one hundred dollars nor more than two hundred dollars for the second and each subsequent offense, besides the costs of collection.

Board of School Trustees to Furnish Books, etc., in Certain Cases.

1383. SEC. 4. Whenever it shall appear, to the satisfaction of the Board of School Trustees of any school district in this state, that the parents, guardians, or other persons having control and charge of any child or children in attendance upon the public school of said district, in accordance with the provisions of this Act, are unable to procure suitable books, stationery, etc., for such child or children, it shall be the duty of such board to procure, or cause to be procured, for such child or children, all necessary books, stationery, etc., the same to be paid for out of the fund of said school district, in the same way that other claims against the school district are now allowed and paid; *provided*, that all books, stationery, etc., purchased under the provisions of this Act, shall be deemed to be the property of the school district, to be under the care and control of the School Trustees when not in actual use.

Fines, How Disposed Of.

1384. SEC. 5. All fines collected under the provisions of this Act shall be paid into the county treasury on account of the state school fund.

County Superintendents to Publish This Act—Notice to Be Posted.

1385. SEC. 6. It shall be the duty of the County Superintendent of Public Schools in each county in this state to cause this law to be published in some newspaper in his county, if any there be, four consecutive times, annually, for a period of two years, the expense of such publication to be allowed and paid out of the general school fund of the county. The Board of School Trustees in each school district shall cause to be posted annually, for a period of two years, in three public places in their district, notices of the requirements and penalties of this law.

An Act to provide for the education of the deaf and dumb and the blind of the State of Nevada.

Approved March 2, 1869, 103.

Duty of Superintendent of Public Instruction in Relation to Deaf, Dumb and Blind.

1386. SECTION 1. The Superintendent of Public Instruction is authorized and required to make arrangements with the Directors of the institution for the deaf and dumb and the blind, at San Francisco, in the State of California, for the admission, support, education, and care of the deaf and dumb and the blind of this state, and for that purpose is hereby empowered to make all needful contracts and agreements with said Directors to carry out the provisions of this Act.

Application, How Made—Superintendent to Issue Certificate.

1387. SEC. 2. Upon the application, under oath, of a parent or nearest friend of any deaf, dumb, or blind person, resident of this state, setting forth that by reason of deafness, dumbness, or blindness, such person is disqualified from being taught by the ordinary process of instruction, and that the parents or guardian of said person are unable to pay for his or her support and education in the aforesaid institution, and file the same with the Board of County Commissioners of the proper county, and such board shall be satisfied of the truth thereof, and such board shall have made application to the Superintendent of Public Instruction for that purpose, it shall be the duty of the Superintendent of Public Instruction to issue a certificate to that effect; which certificate, being produced, shall be the authority of the Directors of the institution aforesaid for receiving such deaf and dumb or blind person as a pupil.

Sec. 3 is obsolete.

Persons Entitled to the Benefit of This Act.

1388. SEC. 4. All deaf and dumb or blind persons between the ages of eight and twenty-one years, that are not mentally or physically incapacitated to receive an education, that are free from offensive or contagious diseases, and whose parents or guardians reside in the State of Nevada, and are not able to pay for their support and education in the aforesaid institution, shall be entitled to the benefits intended by this Act; and it is hereby made the duty of the Board of County Commissioners of such county to make provisions, at the expense of the county carrying such pupil to the office of the Superintendent of Public Instruction, who shall make necessary arrangements for carrying the pupil to the institution of instruction before mentioned, at the expense of the state, payable out of the fund provided by this Act.

STATE INSTITUTIONS.

STATE UNIVERSITY.

An Act to provide for the election of the Board of Regents, to fix their term of office, and prescribe their duties.

Approved March 5, 1869, 134.

SECTIONS 1, 2, 3 and 5 of this Act repealed, Stats. 1887, 45.

Regents Not to Be Interested in Contracts.

1389. SEC. 4. No member of said board shall be interested, directly or indirectly, as principal, copartner, agent, or otherwise, in any contract or expenditure created by the board, or in the profits or results thereof. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon

conviction thereof, shall be fined in any sum not exceeding five thousand dollars, to which may be added imprisonment in the county jail for a period not exceeding six months.

An Act relating to the state university and matters properly connected therewith.

Approved February 7, 1887, 42.

Normal School Established—Other Branches.

1390. SECTION 1. There shall be established in the State University of Nevada, a school for the instruction of teachers, in which shall be taught all the branches of instruction which are taught in the common schools of this state, together with the theory and practice of teaching, school law, botany, psychology and geology. There shall also be taught in said university, chemistry, assaying, mineralogy, surveying and geology, so far as they relate to the theory and practice of mining, agriculture and the mechanic arts. There shall also be taught in the preparatory department of said university, typewriting, shorthand, telegraphy, bookkeeping and commercial law so far as they relate to the practical affairs of life. *As amended, Stats. 1891, 92.*

Board of Regents—Term of Office, and How Elected.

1391. SEC. 2. The Governor, Secretary of State and Superintendent of Public Instruction shall constitute the Board of Regents of the State University until the first day of January, A. D. one thousand eight hundred and eighty-nine, and until their successors are elected and qualified. There shall be elected at the next general election, in the same manner as other state officers are elected, three qualified electors, who shall constitute the Board of Regents of the State University. The term of office of two of the Regents so elected shall be four years from the first day of January, A. D. one thousand eight hundred and eighty-nine, and until their successors are elected and qualified. The term of office of one of the Regents so elected shall be two years from and after the first day of January, A. D. one thousand eight hundred and eighty-nine, and until his successor is elected and qualified. And thereafter at each general election preceding the expiration of the term of office of any member of the Board of Regents a successor shall be elected in the same manner as other state officers are elected. The persons elected as Regents under the provisions of this Act, before entering upon the duties of their office, shall take and subscribe [to] the official oath and file the same in the office of the Secretary of State. In case of vacancy in said Board of Regents after the same shall have been filled by election as herein provided, the Governor shall fill the same by appointment until the next general election, when such vacancy shall be filled by election, as herein provided.

Powers and Duties of Board of Regents.

1392. SEC. 3. The powers and duties of the Board of Regents are as follows:

First—To prescribe rules for their own government, and for the government of the university.

Second—To prescribe rules for the reports of officers and teachers of the university.

Third—To prescribe the course of study, the time and standard of graduation and the commencement and duration of the terms, and the length of the vacations of the university.

Fourth—To prescribe the text-books, and provide apparatus and furniture for the use of pupils.

Fifth—To appoint a President of the University, who shall have a diploma from some recognized college of learning of good standing, or some state normal school, who has had at least five years of practical experience as an instructor; who is familiar with the modern methods of imparting instruction generally approved in the United States, and who shall be indorsed as to moral character

and qualifications as an instructor by the President and Faculty of three institutions of learning authorized by law to confer degrees.

Sixth—To prescribe the duties of the President, and fix his salary, and the salaries of all other teachers in the university.

Seventh—To require the President, under their direction, to establish and maintain training or model schools, and require the pupils of the university to teach and instruct classes therein.

Eighth—To control the expenditures of all moneys appropriated for the support and maintenance of the university, and all moneys received from any source whatsoever.

Ninth—To keep open to public inspection an account of receipts and expenditures.

Tenth—To annually report to the Governor a statement of all their transactions, and of all other matters pertaining to the university.

Eleventh—To transmit with such report a copy of the President's annual report.

Twelfth—To revoke any diploma by them granted, on receiving satisfactory evidence that the holder thereof is addicted to drunkenness, is guilty of gross immorality, or is reputably dishonest in his or her dealings; *provided*, that such person shall have at least thirty days' previous notice of such contemplated action, and shall, if he or she asks it, be heard in his or her own defense.

No Compensation Except Expenses—May Appoint Clerk—Restriction.

1393. SEC. 4. The Board of Regents shall have the power to appoint a Chairman, who shall receive no compensation therefor, nor shall any member of the Board of Regents receive any compensation for his services, except necessary expenses in attending meetings of the board. The Board of Regents may employ a Clerk of said board, who shall receive a salary of twenty-five dollars per month, and who shall keep a full record of all proceedings of the board, which shall at all times be open to public inspection, and said Clerk shall not be a teacher in said university.

Meetings.

1394. SEC. 5. The board must hold four regular meetings in each year, and may hold special meetings at the call of the Chairman of the board.

Annual Report of President.

1395. SEC. 6. The President of the University must make a detailed annual report to the Board of Regents, with a catalogue of pupils, and such other particulars as the board may require or he may think useful.

Academic Degree, How Issued—Nevada State Normal School—Teachers' Certificates, What to Receive—Cause for Revocation—Diploma of Graduation.

1396. SEC. 7. Upon the recommendation of the President of the University, the Board of Regents shall issue to those who worthily complete the full course of study in the school of mines or in the school of agriculture, or in the school of liberal arts, or in any equivalent course that may hereafter be prescribed, a diploma of graduation, conferring the proper academic degree, from the Nevada State University; and no diploma bearing the distinctive title, "Nevada State University," shall be issued to any one who has not completed the full course of study as above set forth. Upon the recommendation of the President of the University, the Board of Regents shall issue to those who worthily complete the full four years' course of study prescribed in the Nevada State Normal School, a department of the state university, a diploma of graduation, and said diploma shall bear the heading, "The Nevada State Normal School," and to all persons receiving this diploma, the State Board of Education shall issue a state high school certificate of the first grade, good for five years. To the holders of the above state high school certificates of the first grade, the State Board of Education shall grant a life diploma when said graduates of the Nevada State Normal

School shall have completed at least five years of successful instruction in the public schools of Nevada, or of any other state. Upon the recommendation of the President of the University, the Board of Regents shall issue to those who worthily complete the three years' course of study prescribed in the Nevada State Normal School, a grammar grade diploma of graduation, and said diploma shall bear the heading, "Nevada State Normal School, Grammar Grade Diploma," and to all persons receiving this grammar grade diploma, the State Board of Education shall grant a grammar grade state certificate good for five years. The Board of Regents may require said normal school graduates, before granting the diplomas herein provided for, to sign the following obligation: "I hereby agree to report to the President of the University by letter at least twice a year for three years after my graduation and once a year thereafter, so long as I continue in the profession of teaching, and when I shall leave the profession I will report the fact to him with the cause therefor. A failure to make such reports may be considered sufficient cause for the revocation of my diploma." And further, it is hereby expressly provided that the graduates of the Nevada State Normal School for the year 1895 shall receive their diplomas and state certificates according to the Act of March 19, 1891, hereby amended. Upon the recommendation of the President of the University the Board of Regents shall issue to those who worthily complete the full course of study in any other department of the university, not equivalent to a regular university course, a diploma of graduation, but said diploma shall bear the name of the department from which it is issued, and in no case to bear the heading of the regular university diploma. *As amended, Stats. 1891, 93; 1895, 89.*

President to Manage Affairs.

1397. SEC. 8. It shall be the duty of the President of the University to instruct in the university, and, under the direction of the Board of Regents, to manage all matters connected with the institution, to employ assistant teachers and servants, purchase supplies and make monthly statements to the Board of Regents of all receipts and expenditures, supported by vouchers.

No Discrimination as to Students.

1398. SEC. 9. There shall be no discrimination in the admission of pupils on account of sex, race or color; but no person shall be admitted who is not of good moral character, and who has not arrived at the age of fifteen years, and passed such an examination as shall be prescribed by the Board of Regents, and no person under said age shall hereafter be taught in said institution.

Tuition Free.

1399. SEC. 10. Tuition shall be free.

Superintendent of Public Instruction Must Visit and Report.

1400. SEC. 11. The State Superintendent of Public Instruction must visit the university at least every three months, inquire into its condition and management, and report to the Board of Regents quarter-yearly the condition of the institution, with such suggestions as he may deem proper.

Board of Examiners to Pass Upon Expenses.

1401. SEC. 12. All expenses incurred, of every name and nature, involving the payment of money by or under the direction of the Board of Regents of the University, shall be passed upon by the Board of Examiners, as other accounts against the state, and be paid out of the moneys appropriated for the university.

Repeal.

SEC. 13. Sections one, two, three and five of the Act of March fifth, A. D. one thousand eight hundred and sixty-nine [p. 134], entitled "An Act to provide for the election of the Board of Regents, to fix their term of office and prescribe their duties"; Sections two, three, five and six of the Act of March seventh, A. D. one

thousand eight hundred and seventy-three [p. 166], entitled "An Act to locate the state university, and to provide for the control and maintenance of the same"; Section three of the Act of March seventh, A. D. one thousand eight hundred and eighty-five [p. 75], entitled "An Act to amend an Act entitled An Act to locate the state university, and to provide for the control and maintenance of the same," approved March seventh, one thousand eight hundred and seventy-three, and all other Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

An Act supplemental to an Act entitled "An Act relating to the state university and matters properly connected therewith," approved February 7, 1887.

Approved March 16, 1895, 76.

Analysis of Minerals.

1402. SECTION 1. It shall be the duty of the President of the State University, in addition to his other duties as fixed by law, to cause to be analyzed by an assistant, teacher or teachers employed at the state university, any ore, mineral, soil or water taken from within the boundaries of the State of Nevada, and sent by any citizen of said state for that purpose. Any citizen of the state may send any such substance and have the same analyzed free of charge, and the result of the same returned to him by mail with as near as possible an explanation of their uses and value in market, and there shall be kept at the state university a book of record, open for inspection, under such rules as may be made by the Regents, of all mineral, ores or other matters so sent with the history of such mineral or other matters, stating the name of the person or persons from whom received, the district and county from which it came, and all other matters that may be beneficial touching the same. A duplicate of the sample analyzed, as far as practicable, shall be kept at the university properly labeled so as to correspond to the record, and properly preserved.

Duplicate Sent, When.

1403. SEC. 2. If the same kind of matter for analysis is sent from the same place, it shall not be necessary to analyze the same, but a duplicate of the analysis shall be sent by mail to the person desiring the same.

Samples Analyzed in Order Received.

1404. SEC. 3. Samples for analysis shall be analyzed in the order received.

Sample Assays for Gold and Silver.

1405. SEC. 4. Sample assays for gold or silver shall be made, and when the value per ton exceeds five dollars in gold, the returns shall state the fact thus, "Test for gold." And when the value per ton exceeds five dollars in silver, the returns shall state the fact thus, "Test for silver." *As amended, Stats. 1897, 91.*

An Act creating the Honorary Board of Visitors of the Nevada State University, and other matters relating thereto.

Approved March 11, 1895, 40.

Board of Visitors, How Composed—Term of Office.

1406. SECTION 1. There is hereby created a board to be known as the Honorary Board of Visitors of the Nevada State University. Said board shall consist of fifteen members. The Chief Justice of the Supreme Court shall be ex officio a member and the Chairman of said board. In the absence of said Chief Justice the members of the board may elect one of their number to act as Temporary Chairman. The term of office of the members of said board shall be two years from the date of their appointment, and until their successors are appointed.

Governor to Appoint Members.

1407. SEC. 2. The Governor shall appoint and commission, within forty days after the passage of this Act, from each county, one suitable and discreet person who is interested in higher education, and who is an actual resident of said county, as a member of said board.

Duties of Board.

1408. SEC. 3. It shall be the duty of said Board of Visitors to meet annually at the seat of the Nevada State University during commencement week, and inspect the grounds, buildings and equipment of said university, and also inquire into the actual state of the discipline, instruction, police administration and other affairs or concerns of the university. The Board of Visitors shall report thereon to the Governor, within thirty days after each annual meeting, for the information of the people of the state and of the next succeeding legislature of the state, their action as such visitors, with their views and recommendations concerning the university such as they shall deem wise and just and for the best interests of the university.

Notice to Honorary Board of Visitors.

1409. SEC. 4. The President of the University shall cause at least thirty days' notice to be given to the members of the Honorary Board of Visitors of the time and place of their annual meeting.

Expenses of Members.

1410. SEC. 5. No compensation shall be made to the members of said Board of Visitors for their services or for their traveling expenses, but the Board of Regents shall pay out of the university contingent fund their expenses for board and lodging while at the university.

An Act in relation to the agricultural experiment station of this state.

Approved February 8, 1889, 30.

Agricultural Experiment Station Recognized.

1411. SECTION 1. The agricultural experiment station, organized and established by the Board of Regents of the State University at, and in connection with, said state university, is hereby recognized and shall be continued as a part of said state institution, and shall be conducted by a "Board of Control" hereinafter provided for, for the purposes of acquiring and diffusing among the people useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science, said state university having been established in accordance with the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two, entitled "An Act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanical arts," and Acts amendatory thereof or supplementary thereto.

Board of Control.

1412. SEC. 2. The Board of Control of said agricultural experiment station shall consist of the Board of Regents of the State University, and they shall organize said board and choose its officers.

Keeping and Expenditure of Money.

1413. SEC. 3. The Board of Control of said agricultural experiment station shall, to the best of its ability, observe and carry out the requirements of "An Act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an Act approved July second, eighteen hundred and sixty-two, and of the Acts supplementary thereto,"

approved by the President March second, eighteen hundred and eighty-seven. The said Board of Control shall have charge of the receipts, safe keeping and expenditure of all money appropriated by Congress for the benefit and use of said agricultural experiment station; they shall be allowed and paid all necessary expenses incurred by them severally in the discharge of their official duties, but shall receive no salary or compensation for their services.

Report to Be Published.

1414. SEC. 4. Said Board of Control shall make a report at the end of each fiscal year to the Governor, and twelve hundred copies thereof shall be printed at the state printing office for general distribution by said board. The Governor shall transmit all said annual reports to the legislature.

Acceptance and Agreement.

1415. SEC. 5. The legislature of Nevada hereby gratefully assents to the purposes of all grants of money made heretofore, and all which may hereafter be made, to the State of Nevada by Congress, under the Act of Congress, the title of which is recited in section three of this Act, and agrees that the same shall be used only for the purposes named in said Act of Congress, or Acts amendatory thereof or supplemental thereto.

An Act in relation to the agricultural, mining and mechanical college of this state.

Approved March 18, 1891, 72.

University Established.

1416. SECTION 1. The state university of this state was, and now is, established in accordance with the provisions of the Constitution of the State of Nevada, and also in accordance with the provisions of an Act of Congress, approved July second, eighteen hundred and sixty-two, entitled "An Act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," and Acts amendatory thereof or supplementary thereto.

Powers of Regents.

1417. SEC. 2. The Board of Regents of said state university and agricultural, mining and mechanical college are the proper trustees of same to receive and disburse all appropriations made to this state under the provisions of an Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and mechanic arts, established under the provisions of an Act of Congress, approved July second, eighteen hundred and sixty-two; approved August thirty, eighteen hundred and ninety, and all appropriations hereafter to be made under said Act.

Regents to Report.

1418. SEC. 3. Said Board of Regents shall make a report at the end of each fiscal year, in connection with its annual report to the Governor, of other state university matters, including the amounts received and disbursed under the provisions of this Act. The Governor shall transmit all said annual reports to the legislature.

Grants Accepted.

1419. SEC. 4. The legislature of Nevada hereby gratefully assents to the purposes of all grants of money made heretofore, and all which may hereafter be made to the State of Nevada by Congress, under the Act of Congress, the title of which is recited in section two of this Act, and agrees that the same shall be used only for the purposes named in said Act of Congress, or Acts amendatory thereof or supplemental thereof.

STATE PRISON.

An Act to provide for the government of the State Prison of the State of Nevada.

Approved March 7, 1873, 181.

Powers of the Board of State Prison Commissioners.

1420. SECTION 1. The Board of State Prison Commissioners, as named in section twenty-one of article five of the constitution, shall have such supervision of all matters connected with the state prison as is provided for as follows: They shall have full control of all of the state prison grounds, buildings, prison labor, and prison property; shall purchase, or cause to be purchased, all needed commissary supplies, all raw material and tools necessary for any manufacturing purposes carried on at said prison; shall sell all manufactured articles and stone, and collect the money for the same; shall rent or hire out any or all of the labor of the convicts, and collect the money therefor, and shall regulate the number of officers and employees, and fix the salaries thereof. *As amended, Stats. 1877, 66; 1893, 101.*

Officers of the Board.

1421. SEC. 2. The Governor shall be the President, and the Secretary of State Secretary of the Board; and any two thereof shall be a quorum, with full power to transact any business that may be required of such board.

Secretary to Keep Books.

1422. SEC. 3. It shall be the duty of the Secretary to keep, or cause to be kept, a full and complete account, in a book or books to be kept for that purpose, all of the transactions and proceedings of the board. *As amended, Stats. 1877, 66.*

Warden of State Prison Elected—Powers, Salary and Residence.

1423. SEC. 4. On the third Wednesday in January, A. D. eighteen hundred and ninety-five, the Board of State Prison Commissioners shall elect a Warden of the State Prison. The Warden so elected shall take charge of the same on the first day of February following his election, and shall hold office until his successor is elected and qualified. He shall be subject, at all times, to the order and direction of said Board of State Prison Commissioners. The Warden shall be the chief executive officer of the prison, at a salary of two thousand dollars per annum, and shall reside at the prison. *As amended, Stats. 1877, 66; 1885, 69; 1893, 101.*

Warden's Duties and Powers.

1424. SEC. 5. The Warden shall have the general superintendence of prison discipline and prison labor; shall have the power to engage and remove all employees; shall keep or cause to be kept, a book, wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, date of incarceration, and expiration of term for which the prisoners therein confined why [were] sentenced, and shall make out a correct monthly report of the same, and file such report with the Secretary of the Board, and shall securely and carefully file in his office all commitments of prisoners that may be sent to the state prison, and keep, or cause to be kept, a correct account, and certify any mileage that may be due to any Sheriff or Deputy Sheriff for conveying prisoners to the state prison. *As amended, Stats. 1877, 67; 1893, 101.*

Residence of Warden—Monthly Estimates—Board to Furnish Supplies.

1425. SEC. 6. The Warden shall reside at the state prison, and shall, within five days before the expiration of each month make out a complete statement of the probable or estimated amount of clothing, provisions, medicines, and all other stores and necessities, and character and quality of the same, and make a requisition upon the Commissioners; and they shall, as soon thereafter as possible, furnish, or cause to be furnished, the articles, provisions, or stores thus required,

or so much thereof as they may deem necessary for the use of the prison during the ensuing month; *provided*, that no supplies shall be purchased or articles furnished the prison at a greater price than the usual market rates for such articles; *and, provided further*, that nothing herein contained shall be so construed as to prevent the Commissioners from furnishing any necessary article, at any time not enumerated in the monthly requisition of the Warden, or from purchasing or contracting for a greater than a monthly supply of any article used in said prison, when deemed for the best interest of the state.

Accounts to Be Certified by Warden.

1426. SEC. 7. All accounts for provisions, clothing, medicines, fuel, lights, or other supplies or stores furnished to the state prison, as prescribed in the preceding section, shall be presented to the Warden, and if the articles therein enumerated shall have been received he shall so certify, and the account so certified shall be delivered to the Secretary of the Board, and if the account be correct, and the articles therein named were purchased or ordered by the board, they shall audit and allow the claim. All claims for salaries, repairs, buildings, or labor shall be certified to by the Warden, presented, allowed, and paid as other indebtedness against the state prison.

Proposals for Furnishing Supplies—Notice, etc.

1427. SEC. 8. The Board of Commissioners may, whenever in their judgment it would be for the best interest of the state, advertise for sealed proposals for the furnishing of supplies to the state prison. Notice of the time and place of the letting of each contract shall be given for at least two consecutive weeks in some newspaper published within this state. Such notice shall state the character, quality, and quantity of the supplies required, and any person may bid for the furnishing of all or any part of the articles enumerated in the notice; *provided*, that no contract shall be for furnishing more than one year's supplies, as estimated by the Warden.

Labor of Convicts.

1428. SEC. 9. The Board of Commissioners may, in their discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish such convicts thus employed with any material that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and they shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in their opinion, will best subserve the interest of the state and welfare of the prisoners.

Employment of Prisoners—Power of Board in Relation Thereto—Order of Board in Such Case.

1429. SEC. 10. If, at any time, the Board of Commissioners be of the opinion that it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or inclosures of the state prison, either in improvement of the public grounds or buildings, or for hire upon any private work or employment, where they may be profitably employed, they shall have power to so employ or hire such labor; they shall, in such case, direct the Warden accordingly in writing, and cause a record of such order to be entered at length on the records of the board. All such employment outside of the prison walls or inclosures shall be within a reasonable distance from the prison. *As amended, Stats. 1875, 62.*

Escaped Convicts When Employed Away from Prison.

1430. SEC. 11. The Warden and officers of the prison shall incur no forfeiture for the escape of any convict employed without the walls or inclosures of the prison by order of the Commissioners, or going to or returning from such employment, unless such escape should arise from neglect or violation of law, or the rules, regulations, or by-laws of the Commissioners.

Prison Extended Over Places of Labor.

1431. SEC. 12. The state prison is hereby declared to extend to and over any place or places of employment of the convicts without the walls or inclosures of the prison, at which convicts may be employed, as provided in section nine of this Act.

Moneys Received for Prison Labor to Be Paid Into Prison Fund.

1432. SEC. 13. All sums that are now or may hereafter become due to the state for any manufactured articles sold, or for labor performed either within or without the prison walls or inclosures, shall be certified to under oath by the Warden to the Board of Prison Commissioners, who shall receive and receipt for the same; and all moneys thus received shall be paid into the state treasury, and the Treasurer shall place the same to the credit of the state prison fund; and the Secretary of said board shall make a report thereof to the Controller on or before the tenth of each month. *As amended, Stats. 1875, 116.*

Action for Money Due for Labor or Materials.

1433. SEC. 14. The Board of Commissioners, or either of them, are hereby authorized to commence and maintain an action in their or his own name, for the collection of any debt due, or that may become due, from any person or persons, for any manufactured article sold, labor performed by convicts, for the enforcement of any contracts made by the Commissioners, or damages for the non-fulfillment of any contract; such suits to be commenced and maintained as provided by law in other cases.

Inspection of Books and Papers.

1434. SEC. 15. All books and papers kept by or under the direction of the Secretary of the Board and the Warden of the State Prison, shall, at all times, on all legal days, be open to the inspection of the Commissioners, all state officers, members of the legislature, and the Sheriffs of the several counties of this state; and shall, at the expiration of their term of office, be delivered over to their successors.

Divine Service at Prison—Bible to Be Furnished.

1435. SEC. 16. It shall be the duty of the Commissioners to provide for the holding of divine service in the state prison on each Sabbath day, and for that purpose may secure the services of one or more ministers of the gospel; *provided*, the expense thus incurred shall not exceed the sum of five hundred and twenty dollars per annum. They shall also furnish each convict with a copy of the Bible, and such other books and papers as may be deemed for the well-being of the prisoners.

United States Criminals, Expense Of.

1436. SEC. 17. The Commissioners and the Warden of the State Prison are hereby required to receive all criminals sentenced to the state prison by the authorities of the United States, and to keep them at hard labor or in solitary confinement, agreeably to the order of the court pronouncing such sentence, until legally discharged therefrom; and the Warden shall certify to the board the expense of keeping all convicts thus sentenced, and said board shall certify the same to the State Controller.

Rules and Regulations of Prison.

1437. SEC. 18. The Board of Commissioners shall, from time to time, cause to be placed in some conspicuous place or places about the prison, so much of the laws of the state, and the rules, regulations, and by-laws of the state prison, as relates to the intercourse between visitors to the prison and the prisoners therein confined.

Penalty for Violation of Rules.

1438. SEC. 19. Any person who shall violate any of the rules, regulations,

or by-laws of the prison, as adopted and published by the State Prison Commissioners, shall be subject to such penalties as may be prescribed by the Commissioners, and proceeded against in such manner as may be prescribed by law and the rules of said Commissioners; *provided*, that no barbarous punishments, by whipping, showering, or otherwise, shall be prescribed by such Board of Commissioners; nor shall convicts, as punishment, be deprived of regular rations of food, and at the same time compelled to work the usual number of hours per day.

Convicts Granted Credit—How Forfeited.

1439. SEC. 20. The Board of Commissioners are hereby authorized and required to grant to any convict confined in the state prison, who shall well behave himself, and who shall perform regular labor during good health, either within or without the state prison inclosure, a credit of six days for each month of such regular work and good behavior, such credit to be computed in favor of any such convict as a commutation of sentence, and to be deducted from the entire term of penal servitude to which such convict shall have been sentenced; *provided*, that said rule of commutation shall be so applied that the six days of credit thus earned or allowed shall be forfeited by any refusal to labor, breach of the prison rules or other misconduct as may be hereafter prescribed by the Commissioners during the month next succeeding that in which such credit may have been allowed. *As amended, Stats. 1887, 96.*

Required to Perform Labor—Time Allowed for Good Behavior, etc.—How Forfeited.

1440. SEC. 21. The Board of Commissioners shall require of every able-bodied convict in said prison as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison, and every convict faithfully performing such labor and being in all respects obedient to the rules and regulations of the prison, or if unable to work, yet faithful and obedient, shall be allowed from his term, instead and in lieu of the commutation heretofore allowed by law, a deduction of two months in each of the first two years, three months in each of the next two years, and four months in each of the remaining years of said term; *provided*, that any such convict who shall commit an assault upon his keeper, or any foreman, officer or convict, or otherwise endanger life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever, shall forfeit all deductions of time earned by him for good conduct before the commission of such offense; forfeiture, however, shall only be made by the Board of Commissioners after due proof of the offense and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the Board of Commissioners shall be the sole judges. The name of no convict who attempts to escape, after the passage of this Act, shall be sent by the Warden or state prison officials to the Board of Commissioners for the commutation herein provided; *provided, further*, that of those prisoners entitled to their discharge at the date of the passage of this Act by virtue of the provisions hereof, not more than one shall be discharged on any one day, and the discharge shall be made under the directions of the Board of Commissioners. *As amended, Stats. 1881, 109.*

So far as the above section is retroactive it is unconstitutional. *Ex Parte Darling, 16 Nev. 98.*

Warden to Execute a Bond—Vacancy, How Filled.

1441. SEC. 22. The Warden, before entering upon the discharge of his duties, shall execute a bond in such sum as the Board of Commissioners shall designate, not exceeding twenty thousand dollars, for the faithful discharge of his duties, which bond shall be given to the State of Nevada, approved by the Chief Justice of the Supreme Court, and filed with the Secretary of State. (SEC. 6.) In the event of the death or resignation of the Warden so elected, the vacancy shall be filled by the Board of State Prison Commissioners. *As amended, Stats. 1877, 67.*

SEC. 23 obsolete.

An Act supplemental to an Act to provide for the government of the state prison, approved March fourth, one thousand eight hundred and sixty-five, and to repeal certain Acts in relation thereto.

Approved March 14, 1865, 400.

Controller to Draw Warrants on Treasurer.

1442. SECTION 1. The Controller of State is hereby authorized and directed to draw his warrants on the state treasury, payable out of the state prison fund, for all accounts allowed by the Board of Prison Commissioners, on presentation; also, to draw his warrant in favor of the Warden, for his salary, as provided by law; and the Treasurer of State is hereby authorized and directed to pay the same out of the state prison fund.

SECS. 2 and 3 are obsolete.

Warden to Report to Legislature.

1443. SEC. 4. It is hereby made the duty of the Warden to prepare and submit to the legislature, at the commencement of each session, a full and complete statement of all matters pertaining to the prison for the preceding year ending on the thirty-first day of December, setting forth the number of prisoners, their age, sex, time of incarceration, with the sentence, and where from; also a complete financial review, showing the current expenses of the fiscal year, with estimates for the ensuing year.

Acts Repealed.

SEC. 5. All Acts of the territorial legislature relating to state prison, except so much as pertains to the purchase of the prison property, are hereby repealed.

An Act amendatory of and supplementary to an Act to provide for the government of the State Prison of the State of Nevada, approved March seventh, eighteen hundred and seventy-three.

Approved March 2, 1875, 116.

SECTION 1 amends Sec. 13 of the Act of March 7, 1873.

Monthly Statement by Warden, in Duplicate.

1444. SEC. 2. On or before the tenth of each month, the Warden shall prepare a statement in duplicate, setting forth in detail the number, value, and description of all articles manufactured for sale at the prison, and the number and value of all articles sold during the preceding month. The original he shall file with the Secretary of the Board of Prison Commissioners, and the duplicate with the State Controller.

Quarterly Statement of Warden, in Duplicate.

1445. SEC. 3. The Warden shall also prepare a quarterly statement, which shall be in duplicate, and filed with the Secretary of the Board and the State Controller, setting forth in detail the amount, description, and value of all articles sold during the preceding quarter, the amount of money collected from such sales, the amount outstanding, what for and by whom owed, the amount, description and value of manufactured and unmanufactured stock on hand, and the amount, description, and value of all tools and machinery on hand connected with the manufacture of articles at the prison.

An Act concerning escaped prisoners and the recapture of the same.

Approved March 1, 1866, 164.

Warden May Issue Warrant for Escaped Prisoners.

1446. SECTION 1. Hereafter, when any prisoner or prisoners escape from the

state prison of this state, it shall be lawful for the Warden of the State Prison to issue a warrant for the recapture of said escaped prisoner or prisoners, which warrant shall have force and effect in any county in this state, and may command the Sheriff of any county in this state, or any Constable thereof, or any police officer of any city in this state, to arrest said prisoner or prisoners, and make return to the Warden, with the prisoner or prisoners who may be arrested under said warrant.

Expenses for Recapture—Proviso.

1447. SEC. 2. Any and all expenses of enforcing the provisions of this Act, or in any wise appertaining to the recapture and return of escaped convicts to the state prison, shall be a charge against the state, and shall be paid out of the state prison fund; *provided, however*, that said escape be not the result of carelessness, incompetency, or other official delinquency of the Warden or other officers of the state prison.

An Act relating to prisoners discharged from the state prison.

Approved February 1, 1875, 49.

Discharged Prisoner Furnished Money.

1448. SECTION 1. Whenever any prisoner shall be discharged from the state prison of this state, either by expiration of his term of sentence, or by pardon, the Warden shall furnish him twenty-five dollars in coin, the same to be allowed and paid out of the state prison fund, the same as any other claim against said fund.

An Act to regulate and make effectual the power of the Governor, Justices of the Supreme Court, and Attorney-General, to remit fines and forfeitures, commute punishments, and grant pardons after convictions.

Approved February 8, 1867, 53.

Proceedings When Fine, etc., Remitted.

1449. SECTION 1. Whenever the Governor, Justices of the Supreme Court, and Attorney-General, or the major part of them, the Governor being one, shall remit any judgment of fine or forfeiture, a certificate reciting the fine or forfeiture remitted, duly signed and attested with the great seal of the state, shall be filed in the Clerk's office of the court wherein the judgment of fine or forfeiture was entered, and the Clerk shall make an entry in the judgment docket or other proper place, showing that the fine or forfeiture is remitted; which filing and entry shall be evidence of the satisfaction thereof.

IT REQUIRES THE GOVERNOR AND AT LEAST TWO OTHER MEMBERS OF THE BOARD TO CONCUR IN GRANTING A PARDON. EX Parte Janes, 1 Nev. 319.

Proceedings When Death Penalty Is Remitted.

1450. SEC. 2. Whenever any punishment involving the death penalty is commuted, a statement in writing shall be made out and signed, reciting the name of the person whose punishment is commuted, and the time and place where convicted; also, the amount, kind, and character of punishment substituted instead of the death penalty, and the place where the substituted punishment is to be served out or suffered, and directed to the proper officer or authority charged by law with the safe keeping and execution of the punishment; which statement, attested with the great seal of this state, shall be sufficient authority for such officer or authority to receive and retain the person named in the statement as therein directed, and the officer or authority named in the statement must receive the person whose punishment has been commuted, and retain him as directed.

Pardons or Remission of Fines or Forfeitures—Notice to County Commissioners.

1451. SEC. 3. Any person intending to apply to have a fine or forfeiture remitted, or a punishment commuted, or a pardon granted, or some one in his behalf, shall make out duplicate copies of notices in writing of such application, specifying therein the court in which the judgment was rendered, the amount of the fine or forfeiture, or kind or character of punishment, the name of the person in whose favor the application is to be made, the particular grounds upon which the application will be based, and the time when it will be presented, one of which he shall serve on the District Attorney and one on the District Judge for the county where the conviction was had; *provided*, in cases of fines and forfeitures a similar notice shall also be served on the Chairman of the Board of County Commissioners. The notice shall be served as herein provided, at least thirty days prior to the presentation of the application, unless a member of the Board of Pardons, for good cause, prescribe a shorter time. When a pardon is granted for any offense committed, such pardon may or may not include restoration to citizenship. If the pardon include restoration to citizenship, it shall be so stated in the instrument or certificate of pardon; and when granted upon conditions, limitations, or restrictions, the same shall be fully set forth in the instrument as aforesaid. Such instrument or certificate shall also contain an order to the officer having the person in custody to discharge him or her from such custody, upon a day to be named in said instrument, upon the conditions, limitations, or restrictions therein named.

Duty of Judge, etc., Receiving Notice of Application for Pardon, etc.

1452. (SEC. 2.) It shall be the duty of all District Judges, attorneys, and County Commissioners receiving notice of an application for a pardon, commutation or remission of punishment, or fine or forfeiture, to transmit forthwith to the Board of Pardons a statement in writing of all matters within their knowledge affecting the merits of such application.

Member May Administer Certain Oaths.

1453. (SEC. 3.) Any member of the Board of Pardons shall have authority to administer an oath or affirmation to any person offering to testify upon the hearing of an application for a pardon, or the commutation of a punishment, or the remission of a fine or forfeiture; and any District Judge, County Clerk, or Notary Public may take and certify affidavits and depositions to be used upon such applications, either for or against the same.

False Oath, etc., Made Perjury—Penalty.

1454. (SEC. 4.) Every person having taken a lawful oath, or made affirmation in an application to the Board of Pardons for a pardon or commutation of punishment, or the remission of a fine or forfeiture, who shall swear or affirm willfully, corruptly, and falsely in any matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof shall be punished by imprisonment in the state prison for any term not less than one nor more than fourteen years.

Notice Not Required.

1455. (SEC. 5.) No notice shall be required of an application for a restoration to citizenship to take effect at the expiration of a term of imprisonment, or for the commutation of the death penalty. *As amended, Stats. 1875, 79.*

Bail Not Remitted.

1456. SEC. 4. The fines and forfeitures herein mentioned shall not be so construed as to include the remittance or discharge from liability on any bail bond.

An Act to provide for the release of certain prisoners confined in the Nevada State Prison.

Approved February 13, 1879, 32.

Legislative Committee.

1457. SECTION 1. The Board of State Prison Commissioners are hereby authorized and allowed, immediately on the assembling of the state legislature, or as soon thereafter as practicable, to select a commission to consist of two members of the senate and three of the house, who shall visit the state prison and consult the Warden, and ascertain if there are any prisoners that, by reason of long confinement, or good conduct, or other circumstances, should in their opinion be pardoned.

Report Filed.

1458. SEC. 2. It shall be the duty of the commission provided for in section first of this Act to file a report of their conclusions and recommendations before the adjournment of the legislature with the Secretary of the Board of Pardons, to be presented to said board at its next regular meeting, providing that the report and recommendations provided for in this Act shall not contain recommendations for the pardon of more than ten per cent of the prisoners contained in said state prison.

An Act to provide for the transfer of insane convicts to the state insane asylum.

Approved March 1, 1883, 102.

When Removed to Asylum.

1459. SECTION 1. Whenever a convict, while undergoing imprisonment in the Nevada State Prison, shall become insane and be so adjudged by a commission of lunacy appointed by the court as in other cases of insanity, it shall be the duty of the Warden to deliver such convict to the Superintendent of the state insane asylum at Reno, Nevada, for detention and treatment therein.

When Returned to State Prison—Escape.

1460. SEC. 2. The Superintendent of the insane asylum shall receive such insane convict and safely keep him, and if such convict be restored to sanity before the expiration of his sentence to said prison, shall deliver him to the Warden thereof, who shall retain such convict therein for the unexpired term of his sentence, unless said convict shall be released by order of the Board of Pardons. An escape from said insane asylum by any convict confined therein under the provisions of this Act, shall be deemed an escape from the state prison, and be punished as such.

HOSPITAL FOR MENTAL DISEASES.

An Act to determine and definitely fix the legal name of the public institution for the care of the indigent insane belonging to the State of Nevada.

Approved March 12, 1895, 44.

Legal Name.

1461. SECTION 1. The public institution of the State of Nevada and the buildings appertaining thereto, established and maintained for the care of the indigent insane of the state, shall hereafter be known as and called the Nevada Hospital for Mental Diseases.

Words Considered Identical.

1462. SEC. 2. The words "Insane Asylum," "Institute for the Care of the Insane," and all words of like import, now or heretofore used in any law, process, investigation, subpoena or commitment, or in relation to any board or commission pertaining to or in any way concerning the arrest, examination, detention or care of the insane or mentally diseased in the State of Nevada shall be deemed

to relate to, and be the equivalent of, Nevada Hospital for Mental Diseases; and hereafter, all processes and proceedings, relating to the insane or mentally diseased of the State of Nevada, shall run and be held in that name.

An Act creating a Board of Commissioners for the care of the indigent insane of the State of Nevada.

Approved February 4, 1887, 39.

Board Created.

1463. SECTION 1. The Governor, State Controller and State Treasurer are hereby constituted a Board of Commissioners for the purpose of providing for the care and maintenance of the indigent insane of the state.

Quorum.

1464. SEC. 2. A majority of said board shall constitute a quorum for the transaction of business.

An Act to provide for the care of the insane of the State of Nevada, and create a fund for that purpose.

Approved March 2, 1889, 104.

SECTION 1 obsolete.

SEC. 2 superseded.

Guardian—Payment of Charges Required.

1465. SEC. 3. The District Judge shall cause inquiry to be made touching the ability of insane persons committed by him to bear the expenses attending the arrest, examination, transmission to the capital, and such other charges as may be necessary in order to properly provide for his or her support. In any case where the insane person is able, by the possession of money, or real or personal property, to pay said expenses, the District Judge shall appoint a guardian for said insane person, who shall be subject to the general law in relation to guardians, as far as the same may be applicable; and when there is not sufficient money in hand, the Judge shall order the sale of the property of such person, or so much thereof as may be necessary, and from the proceeds said guardian shall pay all proper costs and charges incidental to arrest, transmission and proper care and support of such insane person during the period of his or her insanity, or so long as there shall be sufficient means to meet said charges and expenses. And in case such insane person has no means applicable to his or her own support; but has kindred in the degree of husband or wife, or (if a minor) father or mother living within this state, of sufficient means and ability to support such insane person, the Judge before whom the examination is had shall order that all expenses and charges be paid by the nearest of such kindred, or may assess the same among such kindred as he may deem just and equitable, causing such charges as the state may be obligated to pay to the Directors of the asylum at Stockton, to be paid quarterly in advance to the Secretary of State, together with all costs and expenses necessarily incurred in transmitting said person to said asylum. And from the date of such order of the District Judge, such expenses and charges shall be a lien against the property of such kindred, and may be enforced as other liens against real or personal property.

Payment of Expenses by Guardian, etc.

1466. SEC. 4. The District Judge shall require of the guardian of any insane person appointed by him, in addition to the bond now required by law to be given by guardians, to enter into bond with good and sufficient sureties, payable to the State of Nevada, conditioned for the prompt payment in advance to the Secretary of State of all charges and expenses set forth in this Act, so long as said insane person shall be cared for and supported by this state, or so long as said

means or property shall be sufficient therefor, which bond shall be filed in the office of the Secretary of State at the same time that other papers in relation to insane persons are filed; and all sums of money so received by the Secretary of State, as well as those sums received from kindred, as provided in section three of this Act, shall be paid over to the State Treasurer to the credit and become a part of the insane fund created by section seven of this Act, under a sworn statement at least once in every three months, and for all moneys thus paid the Secretary of State shall take duplicate receipts, one of which shall be filed with the State Controller. When the means of any insane person shall become exhausted, or the kindred mentioned in this Act shall become unable longer to provide for the support of such insane person, upon a proper showing to the Judge of the district court where such person was committed, he shall certify such fact to the Secretary of State, who shall immediately transfer the same to the indigent list, and from the date of such certificate said guardian or kindred, as the case may be, shall be relieved from any further liability on account of such bond or insane person.

SECS. 5, 6, 7, 8 and 9 are obsolete.

An Act to provide for the taking care of the insane of the State of Nevada.

Approved February 24, 1881, 59.

SECTIONS 1 to 10, inclusive, obsolete.

SECS. 11 and 12, regarding bonds and payment thereof, obsolete, or nearly so.

Powers of Commissioners—Rules and Regulations—Submit Report to the Legislature.

1467. SEC. 13. The Board of Commissioners, as named in this Act, shall have full power and exclusive control of and over all the grounds, buildings, property, and inmates of the asylum, and shall furnish or cause to be furnished all needful supplies, provisions, and medicines for the care of the insane, and have charge of all other matters connected with the institution. They shall establish such rules, regulations, and by-laws for the construction and government thereof as they may deem proper. The Board of Commissioners shall cause to be kept a record of their proceedings, which shall at all times be open to inspection by a committee of the legislature. During the first week of the session a report shall be submitted to the legislature, showing the annual receipts and expenditures, the condition of the asylum, number of patients admitted during the year, number remaining in the asylum at the date of report, and all matters touching the general affairs of the institution as they may deem proper, and shall from time to time visit the asylum, examine into its affairs, condition, government, and make thorough inspection thereof. * * *

Superintendent—His Qualifications, Pay, etc.

1468. SEC. 14. The Board of Commissioners shall elect one resident physician who shall be the General Superintendent of the asylum, subject at all times to the order and direction of said board, who shall have power at any time to discharge and remove said Superintendent whenever in their judgment it shall be deemed proper for the best interest of the state. The Superintendent so elected shall reside at the asylum, be a graduate in medicine, and receive a salary of two thousand four hundred dollars per year, payable monthly, in equal installments. He shall cause to be kept a fair and full account of all his doings, and of the entire business and operations of the institution, and submit a monthly report to the Board of Commissioners. The Superintendent shall employ all necessary help needed at the asylum, subject to the approval of the Board of Commissioners.

District Judge's Duty, etc., in Regard to Commitments—Form of Certificates.

1469. SEC. 15. From and after the completion of this asylum, and when it shall be ready for the reception of patients, the insane patients now in California

shall be received therein, and it shall be the duty of the Judge of the District Court in each judicial district in this state, upon the application of any person, under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, to cause the said person to be brought before him at such time and place as he may direct; and the said Judge shall also cause to appear at the same time and place one or more licensed practicing physicians, who shall proceed to examine the person alleged to be insane; and if said physicians, after careful examination, shall certify upon oath that the charge is correct, and if the Judge is satisfied that such person is, by reason of insanity, unsafe to be at large, and is incompetent to provide for his or her own proper care and support, and has no property applicable for such purpose, and no kindred in the degree of husband or wife, father or mother, children, brother or sister living within this state of sufficient means or ability to provide properly for such care and support, he shall cause the said indigent insane person to be conveyed to the insane asylum of this state, at the expense of the state, and place the said person in charge of the proper person having charge of the said asylum, together with a copy of the complaint, commitment, and physician's certificate, which shall be in such form as the Board of Commissioners may prescribe.

Paying Patients—Medical Care of Indigents.

1470. SEC. 16. Paying patients whose friends or property can pay their expenses, shall pay according to the terms directed by the Board of Commissioners; but the insane poor shall, in all respects, receive the same medical care and treatment from the institution, and good, wholesome food, and no record of debt shall be made against them.

Claims Approved and Payment Provided.

1471. SEC. 17. All sums due for the support, care, and clothing of the insane, and all other needful expenses of the asylum shall be certified by the Board of Commissioners of said asylum and approved by the Board of Examiners, as now provided by the Constitution of the State of Nevada, and audited by the Controller, and paid by the State Treasurer, out of any moneys in the state treasury appropriated for that purpose.

Warrants.

1472. SEC. 18. The State Controller is hereby authorized to draw his warrant in favor of the Commissioners for their incidental expenses in carrying out the provisions of this Act, after the Board of Examiners have properly allowed the same.

Klein v. Kinhead, 16 Nev. 194.

An Act to provide for the admission of certain persons into the Nevada State Insane Asylum.

Approved February 27, 1893, 58.

Idiots and Feeble-Minded Persons Admitted to the Insane Asylum, How and When.

1473. SECTION 1. It shall be the duty of the District Judge in each judicial district of this state, upon the application of any person under oath that any person within said district who has been a bona fide resident of the state for more than five years and of the county wherein he is at the time residing for one full year next preceding the making of said application, is an idiot or feeble-minded person, to cause such person to be brought before him at such time and place as he may direct, and the said Judge shall also cause to appear at such time and place such witnesses as he may deem proper and one or more licensed practicing physicians. Said physicians shall proceed to examine the person and the witnesses so brought before said Judge, the witnesses to be placed under oath, and if said physicians, after careful examination, shall certify upon oath that the charge is correct, giving their reasons therefor, and if the District Judge is

satisfied that such person is an idiot or a feeble-minded person and is incompetent to provide for his or her own proper care and support, and has no property applicable to such purpose, and no kindred in the degree of husband or wife, father or mother, child, brother or sister living within this state of sufficient means or ability to provide properly for such care and support, and is further satisfied that it will be for the best interest of said indigent and the county of which he is at the time a resident, he shall cause the said indigent, idiot or feeble-minded person to be conveyed to the insane asylum of this state at the expense of the county of which said person was a bona fide resident during the period of one year next preceding the making of such application, and placed in charge of the proper person having charge of said asylum, together with a copy of the complaint, commitment and physicians' certificate, which shall be in such form as the Board of Commissioners for the Care of the Indigent Insane of the State of Nevada may prescribe.

Expense of Care of Such Persons, How Provided For.

1474. SEC. 2. The county of which any person committed to said asylum, under the provisions of section one of this Act, was a bona fide resident during all of the year next preceding the making of application for his or her said commitment, shall pay into the treasury of the State of Nevada, quarterly, on the first Monday of January, April, July and October, from and ever after such commitment, the actual expense of maintaining and keeping such person at said asylum, for which said county shall be liable to the State of Nevada, the amount of said expense to be certified to the Board of Commissioners of such county by the Superintendent of said insane asylum.

An Act relating to the transportation of indigent insane persons and convicts.

Approved February 15, 1875, 63.

Expenses of Transporting Convicts and Indigent Insane.

1475. SECTION 1. The expense of transporting convicts and indigent insane persons from the various counties of the state, to the state prison and insane asylum, shall constitute a charge upon the state, and shall be paid by the State Treasurer on the Controller's warrant, to be issued on the approval by the Board of State Prison Commissioners of the claim of the person having charge of the transportation of any such convict, or by the Board of Examiners, of the claim of the person having charge of the transportation of any such indigent insane person; the expense of transporting convicts to be paid out of the appropriation for the support of the state prison, and the expense of transporting indigent insane persons out of the appropriation for the support of the indigent insane.

What Expenses Assumed by the State.

1476. SEC. 2. The expenses to be paid under this Act shall be:

First—The actual expenses of the officer in charge of the indigent insane person or persons, convict or convicts, in traveling to and from the state prison or insane asylum.

Second—The necessary expense of transporting the insane person or persons, convict or convicts, and the sum of five dollars per diem to the officer in charge; *provided*, that in all cases where an appeal shall have been sustained by the supreme court, further transportation of the convict or convicts, shall be at the expense of the county in which said convict or convicts were convicted, at the same per diem and expense as previously provided in this section. *As amended, Stats. 1891, 25.*

No Unnecessary Expense.

1477. SEC. 3. The officer in charge shall transport at the same time all persons awaiting transportation, and the Board of State Prison Commissioners or

Examiners shall not allow any extra expense incurred by the making unnecessary trips in transporting separately persons who might be transferred at the same time.

An Act to further provide for the commitment of insane persons to the insane asylum.

Approved February 21, 1889, 40.

County Clerk May Commit.

1478. SECTION 1. Whenever, by reason of the absence of the District Judge from the county, an insane person cannot be brought before him for examination, he may be taken before the County Clerk of such county, and thereupon said County Clerk shall be vested with power to hold such examination and discharge such person or commit him to the insane asylum in the same manner as may be now done by the District Judge.

An Act to establish a fund for indigent patients discharged from the Nevada Hospital for Mental Diseases.

Approved March 16, 1899, 123.

Fund Established.

1479. SECTION 1. A fund to be known as the indigent discharged patients' fund is hereby established.

Relief of Discharged Patients.

1480. SEC. 2. This fund shall be applied to the relief of indigent patients discharged from the Nevada Hospital for Mental Diseases, to aid them to return to their homes.

How Disbursed.

1481. SEC. 3. This fund shall be disbursed and applied under the direction of the Commissioners for the Care of the Indigent Insane.

Claims First Allowed.

1482. SEC. 4. All claims against this fund shall first be allowed by the Commissioners for the Care of the Indigent Insane, after which they shall be passed, and audited and paid as are all claims against the State of Nevada.

To Set Aside Amount.

1483. SEC. 5. The Board of Commissioners for the Care of the Indigent Insane are hereby authorized and directed to set aside from the regular appropriation for the transportation, care and support of the indigent insane of the state, a sum not less than five hundred dollars for the purpose of carrying out the provisions of this Act for the years A. D. 1899 and 1900.

ORPHANS' HOME.

An Act for the government and maintenance of the State Orphans' Home.

Approved March 1, 1873, 103.

Board of Directors—Officers.

1484. SECTION 1. The administration of the state orphans' home shall be under the control of a board of three Directors, to consist of the Superintendent of Public Instruction, Surveyor-General, and State Treasurer. They shall elect from their number a President and Vice-President. They shall be known by the name and style of the Directors of the State Orphans' Home. *As amended, Stats. 1873, 192.*

Powers and Duties—Record of Proceedings—Reports.

1485. SEC. 2. The Directors shall have full power to manage and administer the affairs of said home, to make by-laws for their own government and the gov-

ernment of the home; *provided*, that they are not repugnant to the laws of the United States or of this state. They shall cause to be kept a record of their proceedings, which shall at all times be open for the inspection of a committee appointed by the legislature; they shall submit to the legislature, during the second week of each session, a biennial report, showing the amount of receipts and expenditures, the condition of the home, the number of orphans and half orphans admitted and discharged during the interval between the regular sessions of the legislature; they shall have power to erect such additions to the building occupied as the home (with the appropriations made biennially for its support) as may be necessary for the proper care and accommodation of the inmates; to appoint a Superintendent and Matron, who shall be man and wife, and a teacher who shall reside at the home and have charge of the educational department—said teacher to be duly qualified as is now provided under the state school law. The Directors shall also have power to employ all other suitable persons necessary to conduct the affairs of the home.

Accounts Against Home Examined—How Paid.

1486. SEC. 3. All accounts and demands against the state orphans' home shall be examined and approved by the Board of Directors before going before the State Board of Examiners, and, when allowed by the Board of Examiners, the Controller of State shall draw his warrant on the state orphans' home fund for that amount.

SEC. 4 (salary) superseded, Sec. 2099.

SEC. 5 obsolete.

Orphans Declared Wards of the State.

1487. SEC. 6. It is hereby determined and declared that all orphans duly admitted to the state orphans' home thereby become the wards of the State of Nevada, and are entitled, under the provisions of this Act, to the care, protection, and guardianship of the State of Nevada; and it is further determined and declared that the State of Nevada, for the care, protection, and guardianship of all such wards, is entitled to their services as herein provided, and has the right to train and educate them for useful places in society, and that such rights of the state are superior to the claims of any and all relations or persons, resident or non-resident.

Orphans, How Admitted to Home—Notice—Expenses.

1488. SEC. 7. Upon the application, in writing, of any citizen of the State of Nevada, in behalf of any whole orphan, to the District Judge of any county, showing such orphan to be the child of parents who (or either of them), at the time of decease, were resident citizens of the State of Nevada, and that the condition of said orphan is such that it would be for his or her best interest to be admitted to the state orphans' home, and giving the name and place of residence of the nearest relation of such orphan, resident in the State of Nevada, such application being verified by the oath of the party making it, the District Judge, sitting either in chambers, or as a court, shall issue a citation, to be served, respected, and enforced as are other judicial writs, commanding applicant to be and appear before him, at a time and place to be specified, not less than five days thereafter (provided said District Judge may, in his discretion, shorten the time), and make proof concerning the matter in the application set forth, and a notice of the hearing shall be given in like manner to the nearest relation of the orphan, resident in the state. At the same time the Judge shall cite the party having the control or custody of said orphan to bring him or her before the Judge on the date of hearing. On the day of the hearing the Judge or court shall examine into the matter of the application, and may hear evidence, and require witnesses to be produced before him, and shall examine said orphan separate and apart from all persons; and if the Judge or court determines that it is for the best interests of such orphan and of the state that he or she shall be admitted to the privileges of

the state orphans' home, he shall make an order to that effect, and direct the Sheriff or some other suitable person to convey, or have conveyed, said orphan to said home, accompanied by a copy of the order of the court, and delivered to any member of the Board of Directors of said home. Any whole orphan, under the age of ten years, need not be brought before such Judge or court on the day of hearing mentioned; but on application, in writing, as hereinbefore set forth, of the nearest relation of any such whole orphan, the notice and citation precedent to the hearing may, in the discretion of the Judge, be omitted. The expenses of the proceedings herein provided for, and of the transportation of orphans to the home, shall be a county charge.

Education of the Orphans—Trades.

1489. SEC. 8. All orphans admitted to the state orphans' home shall, under the direction of its Board of Directors, be taught the usual branches of an English education, and the male orphans shall be taught useful trades and occupations, and engaged in useful employment, as the Board of Directors shall order. The female orphans shall be taught the useful occupation of housewifery, and such other useful occupations as the Board of Directors may provide. All labor and occupation shall be fitted to the capacity and best ability of the orphan, as the Board of Directors may determine.

Restriction as to Admittance of Orphans.

1490. SEC. 9. Upon complying with the requirements of this Act, all orphans under fourteen years of age may be admitted to the state orphans home; *provided*, no orphan ever shall be admitted to, or received into, said state orphans' home who is either an insane person, an idiot, or a person so mentally or physically deformed as to be incapable of receiving the elements of an education in the usual English branches. For the purposes of this Act, the age of majority for all orphans that are or may be wards of the state, shall be eighteen years. *As amended, Stats. 1893, 36.*

Orphans Escaping May Be Recaptured—Action May Be Brought—Property of Wards.

1491. SEC. 10. If during the wardship of any orphan in said home, he or she shall escape or remain absent from said home without consent of due authority, it shall be lawful and it is hereby made the duty of the Board of Directors, and such officers as they may empower, to pursue and capture such ward and return him or her to the home; and they are hereby empowered, in the name of the State of Nevada, with the consent of the Attorney-General, to bring and maintain a summary action at law, or to sue out a writ of habeas corpus to recover and detain any escaping orphan from such home. And in case any orphan in said home shall be or become possessed of property, it shall be the duty of said Board of Directors to appear in any court or proceeding for the purpose of having appointed a proper guardian of the estate of such orphan, and at all times to appear, answer for, and represent said orphan for the protection and care of such property.

Board May Discharge or Apprentice Orphans.

1492. SEC. 11. Whenever said board shall deem it for the best interest of any orphan in said home, or of the state, they may discharge any orphan therein; and they are hereby empowered, whenever they may deem it meet and proper, to apprentice any orphan in said home to the head of any family, or to any person carrying on a useful and proper business; but in all such indentures of apprenticeship the board shall reserve the power to themselves at any time to cancel the same, and reclaim said orphan to the home whenever in their judgment the best interest of said orphan and the state shall demand.

Half Orphans Admitted.

1493. SEC. 12. Nothing in this Act shall be construed to prevent the Board of Directors, at their discretion, from receiving any half orphan from its

living resident parent into said home upon such terms and under such contract as said board may determine; and they may require the living parent of any half orphan so admitted to contribute such sum to its support as they may determine.

Half Orphans Wards of the State.

1494. SEC. 13. Half orphans admitted to the home are hereby declared and adjudged to be wards of the state as fully as whole orphans, subject only to such conditions of admission as may be fixed by the Board of Directors.

Orphans Returned to Guardian, When.

1495. SEC. 14. The board, on the certificate of the District Judge of the county from which any orphan or half orphan was sent, that the parent or guardian is competent to resume the guardianship of such orphan, shall release said orphan, and return him or her to such guardian, and such guardian shall be required to pay all the expenses incident to the removal and return of such orphan to his or her guardian.

Estimate of Supplies Required.

1496. SEC. 15. It shall be the duty of the Superintendent and Matron to furnish semi-annually, in June and December of each year, to the Board of Directors, an estimate of all stores, supplies and fuel required for the use of the state orphans' home for the next six months. The said estimates shall state the kind, quality and amount of such stores, supplies and fuel, and shall be filed in the office of the Secretary, always subject to examination. *As amended, Stats. 1887, 105.*

Contracts for Supplies Advertised.

1497. SEC. 16. The Board of Directors, upon the receipt of said estimate, shall give notice by advertising in one daily paper in Ormsby county for six days that sealed proposals will be received for furnishing to the state orphans' home the amount, quality and kind of stores, supplies and fuel contained [in] the semi-annual estimate now on file in the office of the Secretary of the Board of Directors of the State Orphans' Home. *As amended, Stats. 1887, 105.*

Contract for Supplies Awarded.

1498. SEC. 17. The Board of Directors and Secretary are hereby directed to meet at the office of the Secretary on the first Monday of the second week in each quarter, and then and there open all the sealed proposals. The lowest sealed proposals in price shall be accepted, and noted in the minutes of the Secretary, and the Secretary shall notify the person or persons of the acceptance of their proposal for furnishing the state orphans' home with stores, supplies, and fuel; *provided*, the Board of Directors shall have the right to reject any and all bids from persons not responsible.

An Act granting certain powers to the Board of Directors of the State Orphans' Home.

Approved February 27, 1879, 51.

Gifts Accepted—Donors May Direct the Disposal of Gifts, etc.

1499. SECTION 1. The Board of Directors of the State Orphans' Home is hereby authorized to receive and have full control of any and all gifts, bequests, or donations now made, or that may be made hereafter, to the state orphans' home, and the said board is also hereby empowered to invest or expend the principal and interest of any and all such moneys coming thus into their possession as they may deem best for the interest of said orphans' home; *provided*, that nothing in this Act shall be so construed as to prevent any person or persons, company or society, from making any gift of money or property, and directing how such money or property shall be disposed of, and when; such direction shall

accompany such gift. The Directors of the Orphans' Home shall make such disposition of such gift, or money, or property, as the donor or donors may direct.

STATE PRINTING OFFICE.

An Act to establish a state printing office, and to create the office of Superintendent of State Printing.

Approved March 11, 1879, 138.

Creation of Office.

1500. SECTION 1. The office of Superintendent of State Printing is hereby created, and after the first day of January, eighteen hundred and eighty-one, all printing (except advertising) shall be done under his superintendence, in an office hereafter provided for.

Who Eligible.

1501. SEC. 2. No person other than a practical printer shall be eligible to the office of the Superintendent of State Printing.

Board of Printing Commissioners—State Printer Elected.

1502. SEC. 3. The Secretary of State, State Controller and State Treasurer, shall be known as the "State Board of Printing Commissioners," who shall, thirty days prior to the convening of the next session of the legislature, appoint a Superintendent of State Printing. Said Superintendent to hold office for two years, and thereafter said officer shall be elected by the people, in accordance with proclamation by the Governor, as provided in the case of all other state officers.

Bond Given—Filing of Bond.

1503. SEC. 4. The Superintendent of State Printing, before entering upon the discharge of the duties of his office, shall give a good and sufficient bond to the people of the State of Nevada, in the sum of ten thousand dollars, with two or more sureties, to be approved by the board designated in section three of this Act, for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State.

Duties of Superintendent—Responsibility.

1504. SEC. 5. The duties of the Superintendent of State Printing shall be as follows: He shall have the entire charge and superintendence of the state printing, and all matters pertaining to his office. He shall take charge of and be responsible for all manuscripts or other matter which may be placed in his hands to be printed, and shall cause the same to be promptly executed. He shall receive from the senate or assembly all matter ordered by either house to be printed and bound, or either printed or bound, and shall keep a record of the same, and of the order in which it may be received, and when the work shall have been executed he shall deliver the finished sheets, or volumes, to the Sergeant-at-Arms of either house, as the case may be, or any department authorized to receive them. He shall receive and promptly execute all orders for printing required to be done by the various state officers. He shall employ such compositors, pressmen, or assistants, as the exigency of the work may from time to time require, and may at any time discharge such employees; *provided*, that at no time shall he pay said compositors, pressmen, or assistants, a higher rate of wages than is recognized by the employing printers of the State of Nevada. He shall at no time employ more compositors, pressmen, or assistants, than the necessities of the state printing may require, and he shall not permit any other than state work to be done in the state printing office. The Superintendent of State Printing shall, on the first day of December of each year, make a report in writing, to the Governor, embracing a record of the complete transactions of his office.

Superintendent Not Interested in Contracts.

1505. SEC. 6. He shall not, during his continuance in office, have any interest, direct or indirect, in any contract for furnishing paper, or other printing stock, or material connected with the state printing.

Manner of Furnishing Supplies.

1506. SEC. 7. The State Board of Printing Commissioners are hereby authorized and instructed, when in their judgment they may deem it necessary to advertise for a period of twenty days for bids for furnishing paper and other stationery requisite for the public printing, and said board shall award the contract to the lowest responsible bidder. No bid shall be considered unless it is accompanied by a bond, with two or more sureties in the sum of five thousand dollars, conditioned that if the bidder receives the award of the contract he will, within thirty days, enter into bonds in the sum of five thousand dollars, with two or more sureties, to be approved by the Governor, that he will faithfully perform the conditions of the contract.

SECS. 8, 9, 10, 11 and 12 obsolete.

For salary of Superintendent of State Printing, see Sec. 2100.

The following sections were added to the original Act by an Act approved March 4, 1881, 146:

Printing Authorized to Be Done in the State Printing Office.

1507. SEC. 13. The printing and binding which may be done at the expense of the state, other than that specially authorized by legislative action, shall be as follows: The statutes passed by the legislature, the journals of the senate and assembly, the appendix to the journals of the senate and assembly, the biennial message of the Governor, the annual reports of the Treasurer and Controller, and biennial reports of the Surveyor-General, the Warden of the State Prison, the Commissioners for the Care of the Indigent Insane, the Board of Directors of the State Orphans' Home, the Superintendent of Public Instruction, the biennial report of the Secretary of State, all forms and blanks required in and for the various state offices, and such orders and proclamations as may be required to facilitate, support, or give legitimate expression to the government of the state and the successful working and needful exhibit of its various departments and offices.

Statutes to Embrace What—Number Of.

1508. SEC. 14. There shall be printed of the statutes of each legislature eight hundred copies, and each copy shall be bound in calf, and the volume so bound shall contain the laws, resolutions and memorials passed at each legislative session, the report of the State Treasurer, the Constitution of the United States and the Constitution of the State of Nevada. No other report or thing whatever shall be bound therewith. *As amended, Stats. 1893, 31.*

Journals and Appendix.

1509. SEC. 15. The journals and appendix of the two houses of the legislature shall be printed, and there shall be two hundred and twenty-five copies thereof, bound in the same style as those of the eighth session; and each member of the legislature of which such journals are the record shall be entitled to one copy of the same, that is to say, each Senator shall have a copy of the senate and assembly journal, and each Assemblyman shall have a copy of the senate and assembly journal; and the journal of each house shall be bound separately.

SEC. 16 repealed, Stats. 1893, 24.

Extra Copies of Reports, etc., Printed—Bills of Legislature.

1510. SEC. 17. Whenever any message, report, or other document in pamphlet form, is ordered printed by the legislature, two hundred and twenty-five copies of the same, supplemental to the number so ordered, shall be struck off by the Superintendent of State Printing, and he shall retain the same for binding.

with the journals of the senate and assembly. When any bill introduced into either house of the legislature is ordered printed, that is to say, where the "usual number" is so ordered, the number so ordered shall be considered to be two hundred and twenty-five copies of such bill.

Secretary of State to Furnish Copy for Printer—Duty of State Printer.

1511. SEC. 18. The Secretary of State shall furnish to the Superintendent of State Printing, as soon as may be, and within three days from the time he receives the same from the Governor, after approval, a copy of all Acts, joint and concurrent resolutions and memorials, with marginal notes to the same, passed at such session, and the Superintendent of State Printing shall, within ten days thereafter, print the number of copies as herein provided, and furnish printed sheets thereof to the Secretary of State, who shall, immediately upon the close of such session, make out and deliver to the Superintendent of State Printing an index of the same, and the Superintendent of State Printing shall, immediately upon the close of such session, print the said index and bind it in connection with the laws. The Superintendent of State Printing shall also furnish to each member of the senate and assembly, for distribution among their constituents, fifteen copies of the printed sheets of each Act as printed, or if more than one Act is printed at one time, then copies of the printed sheets of such series of Acts. He shall also distribute one copy of said Act or Acts to each County Clerk, County Auditor, District Judge, District Attorney, and Justice of the Peace in the state. *As amended, Stats. 1889, 80; 1891, 16; 1895, 50.*

Journals, How Furnished—Proof Sheets.

1512. SEC. 19. The Secretary of State shall, within sixty days after the adjournment of each session of the legislature, furnish to the Superintendent of State Printing full copies of the journals of both houses. The Superintendent of State Printing shall, within sixty days thereafter, print the same and deliver proof sheets for correction to the Secretary of State, and whenever corrected proof will complete a form, shall deliver the same in form to the Secretary of State for indexing, who shall, within ten days thereafter, make out and deliver to the Superintendent of State Printing an index to each journal; and the Superintendent of State Printing shall, within thirty days thereafter, print and deliver to the Secretary of State such number of copies of the journals aforesaid, bound in volumes, with the appropriate index thereto, as herein provided.

Style of Printing, Paper, etc.

1513. SEC. 20. The printing to be performed under this Act shall be as follows, to wit: The laws, journals, messages, and other documents, in book form, shall be printed solid, in type not smaller than long primer, on good white paper, each page, except the laws, shall be not more than thirty-three "ems" width, and not more than fifty-eight "ems" long, including title, blank line under it and foot line; the laws to be of the same length as the journals, and not more than twenty-nine "ems" wide, exclusive of marginal notes, which notes shall be printed in nonpareil type, and be seven "ems" wide. Figure work, and rule and figure work in messages, reports, and other documents in book form, shall be on pages corresponding in size with the journals, providing it can be brought in by using type not smaller than minion, and whenever such work cannot be brought into pages of the proper size by using type not smaller than minion, it shall be executed in a form to fold and bind in the volume it is intended to accompany. Bills, and other work of a similar character, shall be printed with type not smaller than long primer, on white plain cap paper, commencing the heading one-fourth of the length of the sheet from top, and when said printing does not occupy more than two pages of said sheet, or less, the same shall be printed upon half sheets, and be not more than forty-six "ems" wide, and not more than seventy-three "ems" long, including running head, blank line under it, and foot line, and between each printed line there shall be a white line corresponding with two lines of nonpareil,

and each printed line shall be numbered. Blanks shall be printed in such form and on such paper and with such size type as the officers ordering them may direct. The laws shall be printed without chapter headings and with no blank lines, with the exception of one head line, one foot line, and two lines between the last section of an Act and the title of another Act; *provided*, that when there shall not be space enough between the last section of an Act to print the title and enacting clause and one line of the following Act upon the same page, such title may be printed upon the following page. The journals shall be printed with no blank lines, with the exception of head line, one foot line, and ten lines between the journal of one day and that of the following day. In printing the "yeas" and "nays," the word "yeas" shall be run in with the names, and the word "nays" shall be run in with the names.

Binding—Printing Commissioners to Make Contracts.

1514. SEC. 21. The work of binding the statutes, journals, messages, reports, and all other printed matter printed by the Superintendent of State Printing which should properly be bound, shall be under his supervision and direction; and when he has not the facilities for performing the work of binding himself, the Board of State Printing Commissioners may make contracts for such binding, at rates not to exceed fifty cents per copy for binding the session laws; forty-five cents per copy for the journals of the senate and assembly, and sixty cents per copy for the appendix.

An Act to authorize the use of the Union Label on all public printing.

Approved March 13, 1895, 58.

Union Label.

1515. SECTION 1. On and after the passage of this Act the State Printer shall cause to be affixed to all public printing the Union Label recognized by the organization known as the International Typographical Union.

Cuts Purchased.

1516. SEC. 2. The State Printer is hereby authorized to purchase such cuts for that purpose as in his discretion are necessary.

STATE LIBRARY.

An Act prescribing office hours for state library, and defining the duties of Lieutenant-Governor as ex officio State Librarian.

Approved March 1, 1883, 101.

Office Hours.

1517. SECTION 1. The office hours for the state library shall be the same as the office hours prescribed for or adopted by other state officers.

N. B. Secretary of State ex officio Librarian, Stats. 1893, 32.

Register Kept—Books, Who May Take.

1518. SEC. 2. The Lieutenant-Governor, as ex officio State Librarian, may appoint a Clerk for said state library, said Clerk to serve without expense to the state, except as otherwise provided by law, and constant attendance must be had in and the library kept open during the office hours prescribed in the first section of this Act, and whenever the supreme court is in session. The Lieutenant-Governor, as ex officio State Librarian, shall be responsible for the safe keeping of all the property belonging to the state library. He shall keep a register of all books, magazines, papers, pamphlets, maps, charts, and other property added to the library, and of the cost thereof, and shall stamp the same with the library seal. He shall keep a register of all books taken from the library, when taken out, by

whom, and when returned. He shall not permit any person or persons, except such as are authorized by law, to take from the library any book, magazine, paper, or other property belonging thereto.

Purchase of Books.

1519. SEC. 3. The Lieutenant-Governor, as ex officio State Librarian, shall have power to draw from the state treasury, at any time, all money which may be therein belonging to the state library fund, and expend the same in the purchase of books, and binding of magazines, newspapers, and other documents for the state library; *provided*, that no warrant shall be drawn by the State Controller for such purposes unless the bill or account presented by the Lieutenant-Governor, as ex officio State Librarian, shall be approved and allowed by the Board of Examiners. In the purchase of books regard shall be had, first, for the procurement of such books on law and reports of judicial decisions as shall be deemed suitable to the wants of the supreme court.

Report to Governor.

1520. SEC. 4. The Lieutenant-Governor, as ex officio State Librarian, shall, on the first Monday of January in each year, furnish to the Governor, to be submitted by him to the legislature when organized, a full report of the purchase and expenditures for the preceding year and the amount of moneys drawn from the treasury, with a list of all books, magazines, newspapers and other documents missing or acquired during the year, specifying those obtained by exchange, donation or purchase, and make such recommendations as he may deem advisable in connection with the affairs of said library.

Official Bond, etc.

1521. SEC. 5. Before entering upon the duties of the office, the Lieutenant-Governor as ex officio State Librarian, shall execute an official bond in the sum of one thousand dollars, with sureties to be approved by the Governor, conditioned for the faithful discharge of his duties and delivery over to his successor of all the books and other property belonging to the state library, said bond to be deposited in the office of the Secretary of State.

To Give Receipt.

1522. SEC. 6. Upon assuming the duties of his office the Lieutenant-Governor, as ex officio State Librarian, shall execute a receipt and deliver the same to the Justices of the Supreme Court for all books and other property in the state library.

Repeal.

SEC. 7. The Act entitled an Act to amend an Act entitled "An Act in relation to the state library," approved February 14, 1865; approved March 5, 1877; approved March 3, 1881 [p. 117], and all other Acts and parts of Acts in conflict with the provisions of this Act, are hereby repealed.

An Act in relation to the state library.

Approved February 14, 1865, 153.

What Books and Documents Preserved in the State Library.

1523. SECTION 1. All books, maps, and charts, now belonging to, or which may hereafter come into possession of this state, by purchase or otherwise; all books, maps, charts, pamphlets, and other documents, which, by any state officer, may be received in their official capacity from the general government, or in exchange from other states or territories, or received from foreign nations, or donated to the state by any person or corporation, shall be placed in the state library, and shall be carefully preserved by the Librarian.

Care of Books—Report.

1524. SEC. 2. The Secretary of State shall be ex officio State Librarian, and shall take charge of the library, and all papers and furniture properly belonging thereto, under such regulations as are herein provided, or which may hereafter be prescribed by law. He shall be responsible for the safe keeping of all the property of the state library, and shall cause all the books, maps, charts, pamphlets, and other documents thereof, to be impressed with the proper stamp or seal, after the same shall have been procured by the Directors hereinafter named. Said Librarian shall at all times keep, in a convenient place in the library, a catalogue of the books belonging thereto for reference. He shall annually, by the first Monday of January, report to the said Board of Directors the condition of the library, and recommend such additions thereto, and improvements therein, as he may think advisable for the interests of the same.

Who May Take Books from the Library—Proviso.

1525. SEC. 3. Books may be taken from the state library by the members of the legislature during its session, and at any time by the Governor and other officers of the executive department of this state who are required to keep their offices at the seat of government, the Justices of the Supreme Court and Attorney-General; *provided*, that no person shall be permitted to have more than two volumes of miscellaneous works from said library at the same time.

Register of Books Issued—How Long Books Retained.

1526. SEC. 4. The Librarian shall cause to be kept a register of all the books issued and returned at the time they shall be so issued and returned, and none of the books, except the laws, journals, and reports of this state, which may be taken from the library by members of the legislature, during the session, and law books taken by the Judges of the Supreme Court, shall be retained more than two weeks; and all the books taken by the members of the legislature shall be returned at the close of the session.

Penalty for Injury or Failure to Return Books.

1527. SEC. 5. If any person materially injure or fail to return any books taken from the library within the time prescribed in the foregoing section, he shall forfeit and pay to the Librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs.

Penalties, How Recoverable.

1528. SEC. 6. All fines, penalties, and forfeitures accruing under and by virtue of this Act, shall be recoverable by action of debt, before any Justice of the Peace or court having jurisdiction of the same, in the name of "The State of Nevada," for the use of the state library; and in all such trials the entries of the Librarian, to be made as hereinbefore described, shall be evidence of the delivery of the book or books, and of the dates thereof, and it shall be the duty of such Librarian to carry the provisions of this Act into execution, and bring suit for all penalties or injuries mentioned in this Act.

Fees to Go to Library Fund.

1529. SEC. 7. Each and every officer of this state, civil and military, except Commissioners of Deeds and Notaries Public, shall, at the time of the issuance of his commission, and before entering on the duties of his office, pay to the Secretary of State the sum of five dollars, which, with all fees of whatever character, by the laws now in force, or which may hereafter be provided, to be charged and collected in the office of the Secretary of State, shall constitute a portion of the library fund; and the Secretary of State shall exhibit an account of, under oath, and pay to the State Treasurer, at the end of each quarter, dating from the first day of January, all moneys collected under this Act, and the same, together with such revenues as are hereinafter provided, shall be reserved, set apart, and appropriated exclusively as a state library fund.

Fee for Admission of Attorney—Library Fund.

1530. SEC. 8. No person shall be permitted to practice as an attorney or counselor-at-law, or admitted as such by the supreme court, or any district court of this state, until he shall have paid to the Clerk of said court the sum of ten dollars, which amount shall, at the times mentioned, and under like conditions, be paid by the Clerk of such court to the State Treasurer, as a part of said library fund; *provided*, that the provisions of this section shall not apply to such persons as have heretofore paid such fee into the library fund of Nevada Territory, and all moneys which have been, or may hereafter be, collected and paid into the treasury, arising from the admission of attorneys or counselors-at-law, and *provided* as a library fund, shall become a part of the state library fund.

For fee of attorney, see also Secs. 2469 and 2614.

SEC. 9 was amended, Stats. 1875, 150; 1877, 166; 1881, 117; superseded, Secs. 1517-1522.

SEC. 10 also superseded, Secs. 1517-1522.

BOARD OF HEALTH, ETC.

An Act to prevent the spreading of contagious diseases and to establish a State Board of Health.

Approved March 6, 1893, 117.

Members Appointed by the Governor.

1531. SECTION 1. The Governor is hereby authorized, empowered and required, within thirty days after the passage of this Act, to appoint and commission three reputable practicing physicians, residents of this state, as members of and composing the State Board of Health.

Expenses of Board of Health Allowed.

1532. SEC. 2. The term of office of said members of said board shall be two years. Vacancies in said board shall be filled as they occur by appointment made by the Governor. The salary of each member of the board and the Secretary thereof shall be five dollars per day. Necessary traveling expenses incurred by members of the board and Secretary in attending regular and called meetings of the board shall be allowed; *provided*, that the annual expenses of the board, including salaries and traveling expenses, shall not exceed one thousand dollars, which amount shall be paid from out the general fund of the state.

Board of Health, How Organized.

1533. SEC. 3. On the appointment of said members of the Board of Health, the Governor shall call a meeting of said board, not later than ten days after the issuance of their commissions, to be held at Carson City, for the purpose of organization, at which meeting the Governor shall be Chairman. The board shall elect one of their number President of the Board of Health. They shall appoint a reputable practicing physician, resident of this state, Secretary of the Board of Health, who shall hold his office until another Secretary is appointed by the board. The board, in its direction [discretion], may make the Secretary the executive officer of the board.

To Use Means to Prevent Epidemics—Health of Animals.

1534. SEC. 4. The said State Board of Health shall take cognizance of the interest of life and health among the inhabitants of the state; shall make or cause to be made sanitary investigations in inquiries respecting causes of disease, especially of epidemics and contagious diseases, and the means of prevention; the sources of mortality and the effect of localities, employment, habits and circumstances of life on the public health. Said board shall also, when requested or when in its opinion the sanitary interest of localities require it, advise with municipal, county and township officers with regard to the location, drainage,

water supply, heating and ventilation of public buildings, and the drainage and sewerage of towns and cities. It shall be the further duty of the said State Board of Health, upon the application of any owner, agent, manager or transporter, of any sheep, cattle or horses to at once examine and take necessary proofs concerning the health and recent exposure to danger and present condition of such sheep, cattle or horses, and if thereupon the board be satisfied that any or all of such sheep, cattle or horses, are entirely free from all contagious or infectious diseases, said board shall issue to the person soliciting the same, a certificate or bill of health, certifying to such fact concerning such sheep, cattle or horses, as said board shall determine to be free from such disease or danger. *As amended, Stats. 1895, 92.*

Powers of the Board of Health—Penalty for Violation of Order.

1535. SEC. 5. The Board of Health shall have authority to promulgate and enforce such regulations for the better preservation of the public health in contagious and epidemic diseases as they shall judge necessary, and any person, firm, association or corporation, or the managing agent of any person, firm, association or corporation, refusing or neglecting, within five days after having been duly notified in writing, to comply with the requirements of such regulations, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not less than fifty days nor more than two hundred and fifty days.

Meetings.

1536. SEC. 6. Regular meetings of the board shall be held annually, commencing with the date of first meeting ordered by the Governor. Called meetings shall be held at date and place ordered by the President of the Board of Health.

Report.

1537. SEC. 7. The State Board of Health shall report annually to the Governor of the operations of the law, and make such suggestions or recommendations as in their judgment will inure to the public health.

Duties of Peace Officers.

1538. SEC. 8. It is hereby made the duty of Sheriffs, their deputies, Constables, their deputies, and all peace officers, to assist the Board of Health in their efforts to carry out and enforce the provisions of this Act and the rules, regulations and requirements promulgated by the Board of Health.

An Act providing for the creation of a State Board of Medical Examiners, and to regulate the practice of medicine and surgery in the State of Nevada.

Approved March 15, 1899, 88.

Members Appointed by the Governor—Qualifications.

1539. SECTION 1. A State Board of Medical Examiners, to consist of five practicing physicians, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. The members of said board shall be appointed by the Governor; they shall each be a reputable practicing physician, duly licensed as such by some legally chartered medical college of the United States, who shall have been actually engaged in the practice of medicine and surgery in the State of Nevada at least five years immediately prior to their respective appointments. Three of whom shall be appointed from the school of medicine known as the "regular" physicians, and one of whom shall be of the school known as the "Homeopathic," and one of whom shall be of the school known as the "Eclectic," whenever the resident physicians of the state shall afford sufficient members of these respective schools. They shall be appointed by

the Governor for the terms, respectively, one for five years, one for four years, one for three years, one for two years, and one for one year, from the date of their appointments. In case of a vacancy occurring in said board through death, resignation or permanent removal from the state, such vacancy shall be filled by the Governor by the appointment of a person duly qualified under this Act to fill the unexpired term of the person in whose stead the appointment is made. Each appointment, after the expiration of the terms for which appointments shall first be made, shall be for five years next ensuing the period for which the said first appointments are made.

How Organized—When and Where to Meet.

1540. SEC. 2. Said board shall choose one of its members President and one thereof Secretary, who shall hold their offices for one year from the date of their selection. The first members appointed on said board shall meet and organize at the state capitol in Carson City, Nevada, on the first day of May, 1899, and thereafter they shall meet twice in each year, on the first Monday of May and November, at such place as shall be most convenient to the said board and the applicants for authority to practice in this state. And due notice shall be given by publication in a newspaper of all such meetings.

Shall Procure Seal—Power to Issue Certificates—County Clerk Notified of the Issuance of Certificates.

1541. SEC. 3. Said board shall procure a seal and shall receive through their President or Secretary applications for examinations or certificates; the President and Secretary shall have authority to administer oaths and the board to take testimony in all matters relating to its duties; it shall issue certificates to all who furnish satisfactory proof of having received diplomas or licenses from reputable and legally chartered medical institutions of the United States which are in good standing, or from the state examining board of any state of the United States, providing the holder of said state certificate has been practicing in this state for at least five years. It shall prepare two forms of certificates, one for persons who present to it satisfactory diplomas or licenses, and the other for candidates who may be examined by the board, and whenever a certificate is issued by said board, it shall notify the respective County Clerks of the several counties within this state of the issuance of such certificate or certificates; and it shall be the duty of said Clerks to keep and file said notices and also keep a list of the persons to whom issued.

Power to Issue Certificates.

1542. SEC. 4. Said board shall also issue a certificate to any person who shall have been regularly engaged in the practice of medicine and surgery within this state for five years immediately preceding the passage of this Act, and who, after an examination by said board, shall be found to be qualified to practice medicine and surgery. It shall also issue a certificate to any person who has had issued to him a diploma or license from any reputable school or college of medicine and surgery which is located without the United States, upon the applicant being found competent after having passed a satisfactory examination by the said board. When the board is not in session its Secretary may issue a temporary certificate whenever an applicant shall have deposited the usual fee and filed his diploma or license with him, and such temporary certificate shall entitle the holder to practice until the next regular meeting of said board. And all examinations of applicants to practice shall be thorough and searching, and shall be in the following branches: Anatomy, physiology, chemistry, materia medica, therapeutics, principles and practice of medicine, principles and practice of surgery, gynecology, obstetrics, ophthalmology, pathology and all subjects relating to the practice of medicine and surgery. The board may judge whether the college and institution which issued any diploma or license presented to it is reputable and legally char-

tered and worthy of recognition, subject to the action of the courts in cases of abuse of its discretion in this respect.

Fee to Accompany Application.

1543. SEC. 5. With each application for authority to practice medicine and surgery there shall be deposited with the board, or its President or Secretary, the sum of twenty-five dollars (\$25), lawful money of the United States, and all money collected by said board shall be used by it to defray its legitimate expenses.

Forged or Fraudulent Diplomas—Misdemeanor—Penalty.

1544. SEC. 6. It shall be unlawful for any person to present to said board any forged or fraudulent diploma or license, or one which was not issued to the person presenting the same, and any person who shall so present such a diploma or license shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars or by imprisonment in the county jail for a period of not less than fifty nor more than one hundred and eighty days, or by both such fine and imprisonment for each and every such offense.

Certificate on Diploma.

1545. SEC. 7. Any person to whom a diploma or license has been issued may present the same in person, by letter or by proxy, to the board, accompanied by proof to the satisfaction of the board that such diploma or license was issued to the person presenting the same, and if the board shall be satisfied with such proof, and also satisfied as to the character and standard of the college or institution within the United States which issued said diploma or license, said board shall thereupon issue its certificate to the applicant.

Certificate Recorded.

1546. SEC. 8. Every person to whom a certificate from the Board of Examiners shall have issued, shall before he enters upon the practice of medicine or surgery in this state, have such certificate recorded in the office of the County Recorder of the county in which he resides.

Board May Refuse or Revoke a Certificate.

1547. SEC. 9. The board may refuse a certificate to any individual guilty of unprofessional or dishonorable conduct, and may revoke any certificate for a like cause. In all cases of refusal or revocation the party aggrieved may appeal to the courts for adjudication of the controversy.

Who Deemed Physician.

1548. SEC. 10. Any person shall be regarded as practicing medicine, within the meaning of this Act, who shall profess publicly to be a physician or surgeon, or who shall prescribe for the sick or profess to cure the sick by the administration of drugs or other means, or shall append to his name the letters "M. D.," but nothing in this Act shall be construed to prohibit any gratuitous services in cases of emergency, or to commissioned surgeons in the United States Army or Navy.

How Moneys Shall Be Paid Out—Deficiency, How Met.

1549. SEC. 11. All moneys received by this board shall be paid out on its order for its actual necessary expenses and the expenses of its members incurred in attending its meetings, and in case the money received by said board shall be insufficient to meet its actual expenses and the actual traveling expenses of its members in attending its meetings, then the board shall certify to the State Controller, under its seal and over the signatures of its President and Secretary, the amount actually necessary to meet the remainder of the traveling expenses of its members for attending such meetings, and upon the receipt of such certificate the Controller shall draw his warrant upon the State Treasurer for the same, which

shall be payable out of any funds in the state treasury not otherwise appropriated.

Quorum—Certificates to Bear Seal and Signatures.

1550. SEC. 12. A majority of said board shall constitute a quorum to transact all business. All certificates issued by said board shall bear its seal and the signatures of the President and Secretary, and shall authorize the person to whom it is issued for that purpose to practice medicine or surgery in any and all counties in this state upon complying with the requirements of this Act.

Non-Compliance With Provisions of This Act a Misdemeanor—Penalty.

1551. SEC. 13. Any person practicing medicine or surgery in this state without first complying with the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred (\$100) dollars, or by imprisonment in the county jail for not less than fifty days nor more than one hundred and eighty days for each and every such offense, or by both such fine and imprisonment. Any person may institute proceedings at law provided for in this Act, and it shall be the duty of the Board of Medical Examiners, or any member thereof, whenever satisfied that any of the provisions of this Act have been violated, to institute or cause to be instituted the proper proceedings for a punishment thereof.

No Compensation.

1552. SEC. 14. No member of the Board of Medical Examiners of this state shall receive any compensation for any service or services rendered under the provisions of this Act.

To Take Effect.

1553. SEC. 16. This Act shall take effect, so far as the certificates provided for are concerned and be in force in that respect, on and after the first day of May, 1899, and in all other respects it shall take effect upon its approval.

An Act to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of Nevada.

Approved March 16, 1895, 84.

Certificate Required to Practice.

1554. SECTION 1. That it shall be unlawful for any person who is not at the time of the passage of this Act engaged in the practice of dentistry in this state, to commence such practice unless he or she shall have obtained a certificate as hereinafter provided.

Governor to Appoint—Who May Be Appointed, etc.

1555. SEC. 2. A Board of Examiners, to consist of five practicing dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. The members of said board shall be appointed by the Governor who shall select them from ten candidates whose names shall be furnished him by the Nevada State Dental Society. Three members, at least, of this board shall be members of the Nevada State Dental Society. The term for which the members of said board shall hold their offices shall be four years, except that the members of the board first to be appointed under this Act shall hold their offices for the term of two and four years respectively, and until their successors shall be duly appointed. In case of a vacancy occurring in said board, such vacancy shall be filled by the Governor from the names presented to him by the Nevada State Dental Society. It shall be the duty of the Nevada State Dental Society to present twice the number of names to the Governor of those to be appointed.

Officers of Board.

1556. SEC. 3. Said board shall choose one of its members President and one

the Secretary thereof and it shall meet at least once in each year, and as much oftener and at such times and places as it may deem necessary. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to public inspection.

Dentists to Register—Fee, etc.

1557. SEC. 4. Within six months from the time that this Act takes effect it shall be the duty of every person who is at that time engaged in the practice of dentistry in this state, to cause his or her name and residence or place of business, to be registered with said Board of Examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a Notary Public or Justice of the Peace in such manner as may be prescribed by the Board of Examiners. Every person who shall so register with said board as a practitioner of dentistry may continue to practice the same, as such, without incurring any of the liabilities or penalties provided in this Act, and shall pay to the Board of Examiners for such registration, a fee of one dollar. It shall be the duty of the Board of Examiners to forward to the County Clerk of each county in the state, a certified list of the names of all persons residing in his county, who have registered in accordance with the provisions of this Act, and it shall be the duty of all County Clerks to register such names in a book to be kept for that purpose.

Requisite Qualifications.

1558. SEC. 5. Any and all persons who shall so desire may appear before said board, at any of its regular meetings, and be examined with reference to their knowledge and skill in dental surgery, and if the examination of any such person or persons shall prove satisfactory to said board, the Board of Examiners shall issue to such persons as they shall find to possess the requisite qualifications a certificate to that effect, in accordance with the provisions of this Act. Said board shall also endorse as satisfactory, diplomas from any reputable dental college, when satisfied of the character of such institution, upon the holder of such diploma furnishing evidence satisfactory to the board of his or her right to the same. All certificates issued by said board shall be signed by its officers, and such certificate shall be prima facie evidence of the right of the holder to practice dentistry in the State of Nevada.

Fines for Violation.

1559. SEC. 6. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than fifty dollars, nor more than two hundred dollars, or be confined six months in the county jail. All fines or penalties recovered under this Act shall be paid into the common school fund of the county in which such conviction takes place.

Fees Charged for Certificate—Report to Governor.

1560. SEC. 7. In order to provide the means for carrying out and maintaining the provisions of this Act, the said Board of Examiners may charge each person applying to or appearing before them for examination for a certificate of qualification, a fee of ten dollars, which fee shall in no case be returned, and out of the funds coming into the possession of the board from the fees so charged, the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office, and all legitimate and necessary expenses incurred in attending the meetings of said board. Said expenses shall be paid from the fees received by the board under the provisions of this Act. And no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance and other expenses above provided for, shall be held by the Secretary of said board as a special fund for meeting the expenses of said board and carrying out

the provisions of this Act, he giving such bonds as the board shall from time to time direct. And said board shall make an annual report of its proceedings to the Governor, by the fifteenth of December of each year, together with an account of all the moneys received and disbursed by them pursuant to this Act.

Certificate Registered—Penalty for Neglect.

1561. SEC. 8. Any person who shall receive a certificate of qualification from said board, shall cause his or her certificate to be registered with the County Clerk of any county or counties in which such person may desire to engage in the practice of dentistry, and the County Clerks of the several counties in this state shall charge for registering such certificate a fee of twenty-five cents for such registration. Any failure, neglect or refusal on the part of any person holding such certificate to register the same with the County Clerk as above directed, for a period of six months, shall work a forfeiture of the certificate, and no certificate, when once forfeited, shall be restored, except upon the payment to the said Board of Examiners of the sum of twenty-five dollars as a penalty for such neglect, failure or refusal.

Penalty for False Claim.

1562. SEC. 9. Any person who shall knowingly and falsely claim or pretend to have or hold a certificate of license, diploma or degree, granted by any society, or who shall falsely, and with intent to deceive the public, claim or pretend to be a graduate from any incorporated dental college, not being such graduate, shall be deemed guilty of a misdemeanor, and shall be liable to the same penalty as provided in section six of this Act.

Exception.

1563. SEC. 10. Nothing in this Act shall be so construed as to prohibit any person from extracting teeth.

ELECTIONS.

An Act to provide for the registration of the names of electors and to prevent fraud at elections.

Approved March 5, 1869, 140.

Registry Agents, Who Shall Act—Power to Administer Oaths.

1564. SECTION 1. The Justices of the Peace of the several counties of this state shall be ex officio the Registry Agents of their respective townships, and, as such, their powers and duties shall be as hereinafter provided in this Act; *provided*, that in any township where, from any cause, there shall be no Justice of the Peace duly commissioned and qualified, or where an election district may be situated too distant from the office of the Justice of the Peace of said township, the Commissioners of the county in which said election district is located may appoint some other competent person to perform the duties of Registry Agent, who shall be clothed with the same power and governed by the same restrictions as Justices of the Peace in the registration of the names of electors under the provisions of this Act. All Registry Agents shall have power to administer oaths or affirmations, and do such other acts as may be necessary to fully carry out the provisions of this Act.

STATUTE LIBERALLY CONSTRUED. Where a non-compliance with the provisions of the registry or election laws upon the part of the Registry Agent or officers of the election, is not essential to preserve the purity of elections, and the election is fairly and honestly conducted, the voters should not, on account of such irregularities, be deprived of their votes. *Stinson v. Sweeney*, 17 Nev. 310; *McMillan v. Sadler*, 25 Nev.

Books, etc., Furnished to Registry Agents—Form of Official Register.

1565. SEC. 2. The County Commissioners of the several counties shall provide for the Registry Agents, in their respective counties, when and where required, all proper and necessary books and stationery to carry out the provisions of this Act. They shall furnish to each Registry Agent a book, which shall be known as the "official register," which shall be ruled in columns of suitable dimensions to provide for the following entries opposite the name of each elector, to wit: First—Number on the register. Second—Date of registry. Third—Name of elector. Fourth—Age of elector. Fifth—Where born. Sixth—Number of ward, or name of electoral district. Seventh—Description of residence. Eighth—Certificate of naturalization exhibited.

Duty of Registry Agents—Proviso.

1566. SEC. 3. It shall be the duty of the Registry Agents, at any time when called on to do so, between the hours of ten a. m. and six p. m. on all legal days, from and after the first day of July, and prior to the twenty-first day of October, prior to any general election, and for twenty days prior to closing the register (which shall close ten days prior to the day of election), for any special or municipal election provided for by law, to receive and register the names of all persons legally qualified and entitled to vote at such election, or who will have legally acquired a residence (being otherwise qualified), and right to vote at such ensuing election according to the provisions of law under which such election may be held, in each election district within their respective townships; entering on the official register under the proper heading, the number and date of registry, the name (with the first or given name in full, if practicable); the age and nativity of the elector, together with the number of the ward or name of precinct, and a particular description of the house, building, or room in which the elector resides; such as will enable the officer or person desiring to serve notice of objection to vote, to find the same without difficulty; and when the person so registered shall be of foreign birth, the fact of the exhibition of or failure to exhibit his certificate of naturalization, shall be noted in the column provided for that purpose, which list, properly entered as in this section required, shall be known as the "official register" of elections of their respective townships; *provided*, that for ten days next preceding the day set for closing the registry before any election mentioned in this Act, said Registry Agents shall also be in attendance at their respective offices, and ready to register the names of applicants, at any time between the hours of seven and nine o'clock p. m., in addition to the hours heretofore required in this section; *and, provided further*, that if any person shall fail or refuse to give his residence, with the particularity required in this section, he shall not be registered. *As amended, Stats. 1871, 59.*

FAILURE OF REGISTRY AGENT TO KEEP OFFICE HOURS. It must affirmatively appear that there were good and valid objections which might have been presented if the officer had complied with the law in this respect. *Stinson v. Sweeney, 17 Nev. 310; McMillan v. Sadler, 25 Nev.*

Notice of Expiration of Time of Registration Published.

1567. SEC. 4. The Registry Agents shall cause to be published in a newspaper published in their county, or if none be so published, then in the newspaper published nearest to their county seat, for twenty days before the expiration of the time provided for registration, prior to any general election, and for ten days before the expiration of the time provided by law for registration prior to any special or municipal election, a notice to the effect that the time for the registration of the names of the qualified electors in election districts number ____ of township number ____, prior to the ____ election, (specifying the election), to be held on the ____ day of ____, A. D. 18__, for the county of ____, (or city of) ____, will expire at six o'clock p. m. on the ____ day of ____, A. D. 18__. The publication of said notice shall continue until the expiration of the time provided for said registration; *provided*, that in remote or new and sparsely settled districts

written notices posted at not less than five conspicuous places within said district, may be substituted for the publication in a newspaper.

Qualification of Elector—Oath.

1568. SEC. 5. Every person applying to be registered shall, before he shall be entitled to have his name registered, take and subscribe the following oath or affirmation, which shall be administered by the Registering Agent; *provided*, that no elector who has taken said oath at the time of his previous registration in this state, shall be required to do so the second time, to wit:

"I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the age of twenty-one years, and will have actually and not constructively resided in this state six months, and in the county thirty days, next preceding the day of the next ensuing election (or, in case of a municipal election, such length of time as may be required by the Act of incorporation), and that I am not registered elsewhere in this state. So help me God (or under the pains and penalties of perjury)."

Whenever an oath is required by the provisions of this Act, the elector shall swear according to the form of his religious faith or belief, and in such manner as may be considered most obligatory on his conscience. *As amended, Stats. 1873, 173.*

LEGISLATIVE POWER AS TO RIGHT OF SUFFRAGE. The legislature can add no qualification as title to the right of suffrage to those prescribed by the constitution. *Clayton v. Harris, 7 Nev. 64; Whitney v. Findlay, 20 Nev. 198.*

Duty of Registry Agent Upon Challenge, etc.—Applicant May Apply to District Court—Who Deemed Registered.

1569. SEC. 6. When any person shall appear and demand to be registered, whom the Registry Agent shall not know to be entitled to registry, under the qualifications required by law for the election then ensuing, the Registry Agent may question the applicant generally, either under oath or not, as to his qualifications as an elector, and, if satisfied, shall enter his name in the registry. But if the Registry Agent shall not be fully satisfied, or if the applicant be challenged by a qualified elector of the county, stating distinctly the grounds of challenge, the Registry Agent shall require the applicant to answer truly, under oath or affirmation, the following questions, together with such other questions as said Registry Agent may consider necessary and proper, testing his qualifications as an elector for the ensuing election, to wit: First—Are you a citizen of the United States? Second—Are you now or will you be twenty-one years of age prior to the day of the next ensuing election? Third—On the day of the next ensuing election will you have actually and not constructively resided in this state six months, and in this county thirty days (or in this city-----days, or -----months, as provided by the Act of incorporation) next preceding the day of said election? Fourth—Are you now a resident of the election district in which you propose to be registered? Fifth—Are you registered for this electoral year in any other election district in the name you have now given, or in any other name? If any of the foregoing questions shall be answered in the negative, except the fifth, or that in the affirmative, the applicant shall not be registered; but if the applicant answer all the foregoing questions in the affirmative, except the fifth, and that in the negative, and the Registry Agent shall still believe from the answers to such further questions as he may be led by circumstances to ask, that the applicant is not a qualified elector, he shall refuse to register the name of said applicant. But such applicant may then apply to the district court of his district, or the Judge thereof, for a writ of mandamus to compel the proper registration of his name in such election district; and any elector may also apply to the district court of his district, or the Judge thereof, for a writ of mandamus to compel the Registry Agent to erase from the registered list of electors the name of any person therein registered whom the applicant may know and be able to prove is not a qualified elector; *provided*, that said Registry

Agent shall have notice and opportunity to be heard before said court, or Judge thereof, and show cause for his refusal. A resident, within the meaning of this Act, shall be construed to mean a person who has resided or will have resided continuously within this state for six months, and in the precinct, the time prescribed by law, next preceding the day of the next ensuing election. The electoral year shall commence the first day of January and end on the thirty-first day of December of each year. Whenever in the same electoral year there shall be held in any township more than one election, general, special, or municipal, any person registered for any one of such elections shall be deemed registered for all subsequent elections in the same year for which the residence qualification is included in or implied by the residence qualification of the previous election, and in all cases registration for a municipal election shall be deemed registered for any succeeding general election in the same year. The persons so deemed registered shall be subject in all cases to be excluded from the registry by reason of change of residence, or other causes, as provided elsewhere in this Act.

SPECIAL ELECTION—CONSTITUTIONAL AMENDMENTS—REGISTRATION NOT AN ELECTORAL QUALIFICATION. Boyle v. Board of Examiners, 21 Nev. 67.

Naturalized Citizen—Questions Propounded.

1570. SEC. 7. When a naturalized citizen shall apply for registration, his certificates of naturalization must be produced and stamped or written in ink by the Registry Agent, with his name and the year and county where presented; but if it shall satisfactorily appear to the Registry Agent, by the oath or affirmation of the applicant (and the oath or affirmation of one or more credible citizens, as to the credibility of such applicant, when deemed necessary), that such certificate of naturalization is lost or destroyed, or beyond the reach of the applicant for the time being, said Registry Agent shall register the name of said applicant, unless he be by law otherwise disqualified; *provided*, that in case of failure to produce the certificate of naturalization, the Registry Agent shall propound to him the following questions: First—In what year did you come to the United States? Second—In what state, county, court, and year did you declare your intention to become a citizen? Third—In what state, county, court, and year were you finally admitted to citizenship? Fourth—Where did you last see your certificate of naturalization? The answer to the above questions shall be taken down in the form of an affidavit, which shall be subscribed and sworn to by the applicant and retained in possession by the Registry Agent, and by him handed over to his successor; *provided*, that no person shall be required to make the affidavit twice before the same Agent, or the successor of such Agent, having in his possession a former affidavit.

Names Registered, Posted and Distributed—Notice of Time for Receiving Objections—Objections and Notice Served—Examination.

1571. SEC. 8. On the day next succeeding that on which the registration of electors, prior to any election mentioned in this Act, shall have been closed, the Registry Agents shall, with all reasonable expedition, prepare, and cause to be written or printed, a full and complete list of all the names registered by them, and then remaining on the official register, for each election district, alphabetically arranged, commencing always with the surname of each; and they shall have printed or written such reasonable number of copies of each district list as in their judgment may be necessary, at least five copies of which they shall cause to be posted up in as many public and conspicuous places within the district to which they apply, and the remainder of such lists shall be distributed among the electors of the respective districts. The Registry Agents shall give notice in said lists that they will receive objections to the right to vote, on the part of any person so registered, until six o'clock p. m. on the fourth day previous to the day of election; and also requesting all persons whose names may be erroneously entered in said lists to appear at his office and have such error corrected. Such

objections to the right to vote shall be made only by a qualified elector in writing, setting forth the ground of objection or disqualification, and sworn to or affirmed to, to the best of his knowledge and belief. A copy of such written objections, with the name of the objector, together with a copy of notice, requiring the person objected to to appear before the Registry Agent at a time certain and specified therein, and answer under oath such questions as may be propounded to him by the Registry Agent touching his qualifications as an elector, shall be served on the person objected to, and such service shall be good when left at the place of residence of such person objected to, as the same shall appear in the official register, however general or indefinite may be the description of the same in said register; *provided*, that personal service shall be required when the objections are filed with the Registry Agent on the last day on which such objections are allowed; but such objections so filed on the last day may be heard and determined on the succeeding day. And no such objections shall be tried unless it shall appear by the return by an officer, or the sworn statement of an elector within the county, appended to such notice, that such objections and notice were by him duly served by copy, as in this section of this Act required. At the time specified in the notice, or at such further time as the hearing may be adjourned to, the Registry Agent, upon being satisfied from the return or affidavit that proper service of notice has been had, as in this section provided, shall proceed to examine such person (if present), under oath, touching all matters specified in such written objections, and respecting his general qualifications as an elector, and the testimony of the person making the objections, and any further evidence offered (which the Registry Agent before whom objections are made may desire to hear in relation thereto). If the Registry Agent shall be satisfied, from the answers under oath of the person objected to, or other evidence, that he is not a qualified elector, as required by law, for the next ensuing election; or if such person, so notified as hereinbefore provided and required, shall fail to appear at the time set, or shall fail to show cause for his non-appearance, it shall be the duty of the Registry Agent to erase his name from the official register; *provided*, that any person whose name may have been so erased, may apply to the district court or the Judge thereof, as is provided in section six of this Act.

Official Registers Copied—Index Books—Check Lists—Copies Delivered, etc.

1572. SEC. 9. During the time intervening between the closing of any registration of electors and the day of the next ensuing election, the Registry Agents shall carefully copy from the official register, into suitable books, one for each election district within their respective townships, the names of all electors registered for such election district, alphabetically arranged (the surname first), entering opposite each name the number it bears on the official register, together with all other entries therein found opposite such name. The Registry Agent shall also prepare, not later than the day next preceding that on which the election is to be held, in "index books," one for each election district, and which shall be known as the "check lists," lists of the names of all electors found on the official register for such election districts, alphabetically arranged (the surname first), with the number such name bears in the official register placed at the left of the name of the elector, and with a blank column at the right of the column of names, formed by two parallel perpendicular lines, in which the Inspectors of Election shall check the names of those voting, by some particular character, as for instance, thus: "V" for voted. Said blank columns last mentioned shall have written "headings" made by the Registry Agents, showing what particular election the said "check lists" apply to, as for instance, "voted at general election, 1868," or "voted at city election, 1869." The copy of the official register, together with the "check list," for election district, as herein provided, shall be carefully prepared and duly certified to by the Registry Agent, and delivered to some one of the Inspectors of Election in each election district, at a time not later than the day next preceding that on which such election is to be held, and

such "check lists" shall be carefully preserved and transmitted by the Inspectors of Election to the Clerk of the Board of County Commissioners, in connection with and as a part of the "election returns," as provided by law.

Transfer—What to State.

1573. SEC. 10. Any registered elector, moving from one election district to another, prior to the day of the ensuing election, may apply to the Registry Agent before whom he has already been registered for that electoral year, at any time prior to the delivery of the certified copies of register to the Inspectors of Election, and have his name taken off the official register, and receive from the Registry Agent a certificate showing substantially that he was on a certain date duly registered in the official register of township No. ----, in the county of ----, and that his name has been erased at his own request; which certificate shall entitle him to have his name registered in the same manner as other names are registered, in any other election district, either within the same county or in any other county, for said election; *provided*, that it shall satisfactorily appear to the Registry Agent receiving the certificate, and to whom application is made for the second registration, that the applicant will have resided such length of time within such county and election district, prior to the next ensuing election, as is or may be provided by law to entitle him to vote.

Registry Agents to Subscribe to Oath—Form of Oath.

1574. SEC. 11. Before entering upon the duties prescribed in this Act the Registry Agents (excepting Justices of the Peace who have been duly qualified) shall severally take and subscribe before an officer duly authorized to administer oaths the following oath or affirmation, which shall be filed in the office of the County Clerk of their respective counties, to wit:

"I, ----, Registry Agent for election districts numbers ---- and ----, in the county of ----, and State of Nevada, do solemnly swear (or affirm) that I will perform all the duties of Registry Agent in and for said election districts according to law and the best of my ability, and that in the discharge of my duties as such Registry Agent I will honestly endeavor to prevent fraud, deceit, or any other manner of abuse of the elective franchise, so help me God (or under the pains and penalties of perjury)." *As amended, Stats. 1881, 55.*

Compensation of Registry Agent—Accounts Made Out, etc.

1575. SEC. 12. The several Registry Agents shall be entitled to receive, as full compensation for all services rendered by them under the provisions of this Act (except for the collection of poll taxes), the sum of twenty-five cents for each name by them legally registered in each electoral year, which shall be a valid claim against their respective counties; and their accounts shall be made out so as to clearly show the number of names by them severally registered during that electoral year, and sworn to and filed with the Board of County Commissioners of their respective counties; and said claims, together with all other just and reasonable demands of other persons for books, advertising, and printing, necessarily incurred in carrying out the requirements of this Act, shall be audited and paid out of the county funds of the several counties as other county charges; *provided*, that the expenses incurred in publishing the notices and printing the lists of electors prior to any municipal election, shall be a charge against, and shall be paid by the corporate authorities of the municipality holding such election.

SEC. 13 repealed, Stats. 1871, 132.

Not Entitled to Vote if Not on Register.

1576. SEC. 14. No person shall be entitled to vote at any election mentioned in this Act, unless his name shall, on the day of election, appear in the "check list" furnished by the Registry Agents to the Inspector of Election of the election district at which he offers to vote; and the fact that his name so appears in the "check list" and in the copy of the official register in the possession of the

Inspectors of Election, shall be prima facie evidence of his right to vote; *provided*, that when the Inspectors of Election shall have good reason to believe, or when they shall be informed by a qualified elector, that the person offering to vote is not the person who was registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name.

Punishment for Illegal Voting or Attempt to Vote.

1577. SEC. 15. Any person who shall vote, or offer to vote, at any election mentioned in this Act, but who shall not be a qualified elector, or any person who, being a qualified elector, shall vote or offer to vote in the name of any other registered elector, shall be deemed guilty of a felony, and on conviction thereof before any court of competent jurisdiction, shall be punished by imprisonment in the state prison for not less than one nor more than three years; and any person who shall willfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides or will reside prior to the day of the next ensuing election; and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, or will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made; and any other person who shall induce, aid, or abet any such person in the commission of either of such acts in this section enumerated and described, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Perjury—Punishment When Penalty is Not Prescribed.

1578. SEC. 16. All willful, corrupt, and false swearing or affirming before any Registry Agent shall be deemed perjury, and on conviction, shall be punished as such. If any Registry Agent, or any other person in any manner concerned, shall willfully and corruptly violate any of the provisions of this Act, the penalty for which is not herein specifically prescribed, he shall be punished for each and every offense whereof he shall be duly convicted, by imprisonment in the state prison for a term not less than one year nor more than five years, or by fine of not less than one hundred nor more than one thousand dollars, or both such fine and imprisonment, in the discretion of the court.

Repeal.

SEC. 17. The Act entitled "An Act to provide for the registration of the names of electors, and for the ascertainment, by proper proofs of the persons who shall be entitled to the right of suffrage," approved February twenty-fourth, eighteen hundred and sixty-six [p. 81], is hereby repealed.

An Act supplemental to an Act entitled "An Act to provide for the registration of the names of electors and to prevent fraud at elections," approved March five, eighteen hundred and sixty-nine.

Approved February 20, 1885, 33.

Printing Names of Voters—Amount Allowed.

1579. SECTION 1. Whenever any Board of County Commissioners shall deem it necessary to have printed copies of the names upon the register of voters in any election precinct (as mentioned in section eight of the Act to which this Act is supplementary), said board shall cause said list to be printed in such manner and for such time, in a newspaper or otherwise, as they may deem best calculated to give notice to the public of the names so registered, and shall cause copies thereof to be forthwith furnished to the Registry Agent of said precinct for post-

ing, as required by said section eight; *provided*, that no registry list shall be printed at the charge or expense of a county, and no Board of County Commissioners shall allow, or Auditor approve any claim therefor, in whole or in part, unless said printing shall have been done at the instance and order of said board; *and, provided further*, that in no case shall the whole amount allowed by said board, approved by the Auditor, or paid by the county for printing any registry list, exceed the sum of fifteen cents for each name upon said list and printed.

An Act to provide for the registration of voters in case of death or resignation of Registry Agent.

Approved March 6, 1879, 84.

In Case of Death of Registry Agent.

1580. SECTION 1. It shall be the duty of the Chairman of the Board of County Commissioners of any county of this state, upon receiving notice from any responsible citizen of the death or resignation of any Registry Agent in their county, after the opening and prior to the closing of the books of registration, to immediately, without giving notice, appoint some competent person to fill such vacancy.

Qualification of Appointee.

1581. SEC. 2. It shall be the duty of such person, so appointed, to qualify within two days after receiving notice of such appointment.

Failure to Qualify.

1582. SEC. 3. In case of the failure of such person so appointed to qualify within the time herein provided, voters may, upon producing evidence as to their right to vote, be registered at any other precinct in said county.

Voters, When Qualified.

1583. SEC. 4. Any person so registered shall, upon presentation and surrender of a certificate of registration, signed by the Registry Agent of said precinct, be considered a legal voter in any precinct of said county.

Construction of Act.

1584. SEC. 5. This Act shall not be so construed as to interfere with the right of the full Board of Commissioners to make such appointment, except in cases herein provided.

McMillan v. Sadler, 25 Nev.

An Act relating to elections.

Approved March 12, 1873, 197.

General Election, When Held.

1585. SECTION 1. A general election shall be held in the several election precincts in this state, on the Tuesday next after the first Monday of November, one thousand eight hundred and seventy-four, and every two years thereafter, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

1. WHEN ELECTION MAY BE HELD. Only by some constitutional provision or legal enactment. Sawyer v. Hayden, 1 Nev. 75; Daggett v. Collins, 2 Nev. 351.

2. TIME OF ELECTION TO REMOVE COUNTY SEAT. State v. Washoe Co., 6 Nev. 104.

Precincts, How, When and Where Established—Inspectors of Election—How Appointed and Notified.

1586. SEC. 2. It shall be the duty of the Boards of County Commissioners to establish election precincts and define the boundaries thereof, and to alter, consolidate and abolish the same as public convenience or necessity may require; *provided*: First—That no new precinct shall be established except upon the peti-

tion of ten or more qualified electors, permanently residing in the district sought to be established, showing that they reside more than ten miles from any polling place in said county, unless it shall appear to the satisfaction of said board that not less than fifty qualified electors reside in said precinct, in which event said precinct may be established without regard to the distance which said electors reside from another polling place or precinct. Second—That no election shall be held in any precinct in which there shall not be at least ten qualified electors, permanently residing therein at the time notice of holding an election therein shall be given. Third—All qualified electors residing in any election precinct in which there are less than ten qualified electors permanently residing at the time notice of holding elections are given, shall be entitled to register and vote in the election precinct having a polling place nearest their residence, by the usual traveled route. Fourth—That no election precinct shall be established or election held at any place in any precinct within one mile of another voting place in the same county, unless there shall have been polled, at said voting place, at the next preceding general election, not less than fifty votes. It shall also be the duty of said Boards of Commissioners, at their first regular meeting in October preceding each general election (and fifteen days preceding each special election), to appoint three capable and discreet persons, possessing the qualifications of electors (who shall not all be of the same political party), to act as Inspectors of Elections at each election precinct; and the Clerk of said boards shall forthwith make and deliver to said Inspectors personally, notice thereof in writing, or deposit the same in the postoffice, registered, and postage prepaid, directed to the Registry Agent of the precinct for which each of said Inspectors is appointed, and it shall be the duty of said Registry Agents, within ten days after the receipt thereof, to serve the same upon each of said Inspectors of Elections. *As amended, Stats. 1875, 59; 1885, 21.*

McMillan v. Sadler, 25 Nev.

NEW POLLING PLACE AFTER REGISTRY CLOSES—DUTY OF REGISTRY AGENT. It is the duty of the Registry Agent to prepare a duly certified check list of the electors registered by him, residing within the limits of the new polling place, and deliver the same to the Inspectors thereof. *Stinson v. Sweeney, 17 Nev. 310.*

Poll Books and Supplies, How Furnished and Distributed.

1587. SEC. 3. It shall be the duty of the Board of County Commissioners to cause their Clerks to furnish the Sheriff with poll books and all other supplies required to be provided by said board for the Inspectors and Clerks of Election, and the Clerk shall at the same time deliver to the Sheriff the ballot boxes and keys, the official ballots, the sample ballots and the printed instructions which he is required to give for the guidance of voters for obtaining and marking their ballots, and the Sheriff shall deliver said poll books, supplies, ballot boxes and keys, and said official ballots, sample ballots and printed instructions altogether to one of the Inspectors of every election precinct in the county, at least one day before the time of holding any election. *As amended, Stats. 1899, 107.*

Notice of Election Sent by Clerk—Form of Notice.

1588. SEC. 4. The several Boards of County Commissioners shall cause their Clerks at least twenty (20) days before any general election and at least fifteen (15) days before any special election, to make out, and send by mail to the respective Registry Agents of their counties, three (3) written or printed notices for the election, to be, as nearly as circumstances will admit, as follows:

Notice is hereby given that on the first Tuesday, the ____ day of _____ next, at the house of _____ (in city, town, district or precinct) of _____, in the county of _____, an election will be held for state, county, district, town or township officers (naming the offices to be filled, as the case may be), which election shall be opened not later than 8 o'clock a. m., and

shall continue until 6 o'clock p. m. of the same day. Dated this ____ day of _____ A. D. _____ (Signed) A. B.,
Clerk of the Board of County Commissioners.

As amended, Stats. 1899, 107.

Notice of Election Posted.

1589. SEC. 5. The respective Registry Agents, to whom such notice shall be delivered, shall put up in three of the most public places of each precinct the notices referring to such precincts at least fifteen days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; one of said notices to be posted at the house where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct. *As amended, Stats. 1899, 107.*

Inspectors to Notify Board of Unwillingness to Serve—Failure to Notify—Penalty.

1590. SEC. 6. If in any precinct any of such Inspectors are unwilling to serve as Inspectors, they shall notify the Board of County Commissioners thereof, within five days after the receipt of the notice of their appointment, who shall immediately appoint some suitable person to fill the vacancy and to serve at such election. A failure to notify the Board of County Commissioners of an unwillingness to serve as an Inspector, as herein provided, shall subject the person to a penalty of not less than ten nor more than one hundred dollars, to be sued for and recovered by said Board of County Commissioners, for the use of the county, before any Justice of the Peace of such county. If, through any accident, sickness, or inability, on the day of election, of such Inspectors, or any one thereof, to serve, the Inspector or Inspectors present on the morning of the election may appoint some suitable person to fill the vacancy.

Inspectors to Appoint Clerks—Term of Service.

1591. SEC. 7. The said Inspectors shall choose two persons having similar qualifications with themselves to act as Clerks of the election. The said Inspectors shall be and continue Inspectors of all elections of civil officers to be held at their respective precincts, until other Inspectors shall be appointed as hereinbefore directed; and the said Clerks of Election may continue to act as such during the pleasure of the Inspectors of Election.

McMillan v. Sadler, 25 Nev.

Oath of Office—Form Of.

1592. SEC. 8. Previous to votes being taken the Inspectors and Clerks of Election shall, severally, take the prescribed official oath, and, in addition thereto, an oath or affirmation in the following form, to wit: "I, A. B., do solemnly swear (or affirm, as the case may be) that I will perform the duties of Inspector (or Clerk as the case may be) of the election to be held this day, according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in any manner, in conducting the same. So help me God (or, if an affirmation, under the pains and penalties of perjury).

Inspectors May Administer Oaths.

1593. SEC. 9. In case there shall be no Judge or Justice of the Peace present at the opening of the election, or in case such Judge or Justice shall be appointed Inspector or Clerk of the election, they are hereby empowered to administer the oath or affirmation to each other, and to the Clerks of the election, and the person administering the oath or affirmation shall cause an entry thereof to be made and subscribed by him in the poll books.

Opening and Closing Polls.

1594. SEC. 10. At all elections to be held under this Act, the polls shall be opened at the hour of eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed;

and, upon opening the polls, one of the Clerks, under the direction of the Inspectors shall make proclamation of the same; and thirty minutes before closing of the polls, proclamation shall be made in like manner, that the polls will be closed in half an hour; but the board may, in their discretion, adjourn the polls for one hour at any time they may think proper during the day, before four o'clock in the afternoon, proclamation of the same being made.

Box, How Provided and Kept.

1595. SEC. 11. There shall be provided and kept by the County Commissioners of each county, at the expense of the county, a suitable ballot box, with a lock and key, and furnish the same to the Inspectors of each election precinct or district within their county.

Box, Form and Care Of.

1596. SEC. 12. There shall be an opening through the lid of each box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the Inspectors of Election, that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the Inspectors, to be designated by the majority thereof, and shall not be opened during the election except in the manner and for the purposes hereinafter mentioned.

Ballots; Form, Color, Size, etc.

1597. SEC. 13. Every elector shall, in full view, deliver to one of the Inspectors of the election a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the offices to which each person so named is intended by him to be chosen. Said ballot may be open or folded, as the voter may choose, and the said ballot shall, in color, size, form, and texture, conform to the requirements set forth in the proclamation of the County Commissioners of each county; and further, that said ballot or ticket shall be free from marks, characters, or device or thing that would enable any person to distinguish by the back, or when folded, from any other legal ticket or ballot.

Manner of Voting—Not on Register Not to Vote.

1598. SEC. 14. It shall be the duty of the Board of County Commissioners, at the time of issuing their election proclamation, as provided in section four of this Act, which shall be a part of the said proclamation, to designate fully the color, size, form, and texture of all ballots to be used at the ensuing election. Said ballot shall be of sufficient width to allow names to be written thereon. It shall be the duty of the Inspectors of Election at each poll, at every election, to have before them a certified copy of the register of voters of the precinct or district for which they are the Inspectors provided by law; and the Inspector to whom any ticket may be delivered, shall, upon receipt thereof, pronounce with an audible voice the name of the person offering to vote, and another one of the Inspectors shall examine the certified copy of the register; and if the name of the person is found thereon, his ticket shall immediately be put in the ballot box without being inspected, if it be a folded ballot. The name of the elector shall then be checked on the certified copy of the register, and the Clerks of Election shall enter his name and number in the poll book. No person shall be permitted to vote whose name is not on the register, and who shall refuse to comply with the requirements of section thirteen of this Act. Said register shall be to said Inspectors of Election conclusive evidence of the right of the person to vote whose name appears upon the same; *provided*, that said Inspectors of Election may require any person to give true answers under oath or affirmation, to all such questions as they may desire to ask touching the identity of the person with the name in or under which he may wish to vote; *provided*, that in all cases said ballots shall be printed on a good quality of white book paper.

Poll Lists to Correspond.

1599. SEC. 15. At each adjournment of the polls, the Clerks shall, in the presence of the Inspectors, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of a majority of the Inspectors, until such poll lists shall be made in all respects to correspond.

Care of Poll Books and Box.

1600. SEC. 16. The ballot box shall then be opened and the poll books placed therein; and such box shall then be locked, and a covering, which shall be indorsed by one of the Inspectors, sealed or pasted over the opening in the lid of the said box so as to entirely cover the same, and the key delivered to another of the Inspectors, and the box to a third, to be designated by a majority of the Inspectors.

Box and Key to Be Kept Separate.

1601. SEC. 17. The Inspector having the key shall keep it in his own possession, and deliver it again to the Board of Inspectors at the next opening of the polls; and the Inspector having the care of the box shall carefully keep it, without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that condition, deliver it to the Board of Inspectors at the next opening of the polls, when the seal shall be broken and the box opened, the poll books taken out, and the box again locked.

Tickets Not to Be Exhibited.

1602. SEC. 18. No ticket or ballot shall on the day of election be given or delivered to, or received by, any person except the Inspector, or a Judge acting as Inspector, nor fold any ticket or unfold any ballot which he intends to use in voting, or exhibit to another in any manner by which the contents thereof may be known, or request another person to exhibit or disclose the contents of any ticket or ballot, within one hundred feet of the polling place; *provided*, that in case any elector voting an open ticket, the Inspector, or Judge acting as Inspector, may fold the same before placing it in the ballot box.

Names Rejected, When.

1603. SEC. 19. If the names of more persons are designated on any ballot found in the ballot box, for the same office, than are to be chosen for such office, then, except in the cases provided for in the next section, all the names designated for such office must be rejected; and the fact of such rejection, and the reason therefor, must, at the time of such rejection, be disposed of as provided in section twenty-six of this Act.

Written and Printed Names for Same Office, Which to Be Rejected.

1604. SEC. 20. When, upon a ballot being found in any ballot box, a printed name and a name written with ink or with pencil appears, and there are not so many persons to be chosen for the office, the printed name opposite the written name must be rejected, and the written one counted; or when, upon a ballot found in any ballot box, a name has been erased, and another one substituted therefor in any other manner than by the use of a lead pencil or common writing ink, the substituted name must be rejected, and the name erased, if it can be ascertained from an inspection of the ballot, must be counted, and the fact thereof noted, and the said ballots disposed of as provided in section twenty-six of this Act.

Legality of Ballots.

1605. SEC. 21. Whenever a question arises in the board as to the legality of a ballot, or any part thereof, and the board decide in favor of the legality, such action shall be taken as in case of a rejected ballot.

Betting on Election a Misdemeanor.

1606. SEC. 22. Every person who makes, offers, or accepts any wager or bet upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Sheriff Authorized to Appoint Deputies at Precincts.

1607. SEC. 23. The Sheriffs of the several counties are hereby authorized to appoint one or more deputies, to serve at each election precinct, for the purpose of preserving order and making arrests, to be paid as other fees.

Challenges at Polls.

1608. SEC. 24. A person offering to vote may be orally challenged by any elector of the precinct, upon the ground that he is not the person entitled to vote as claimed, or has voted before on the same day, in which case the Inspector or one of the Judges shall tender him the following oath: "You do swear (or affirm) that you are the person whose name is entered upon the registry list of this precinct." In case such person refuse to take the oath so tendered, he shall not be allowed to vote, and the Clerk of the election shall write the word "Challenged" opposite the name of each person challenged upon the registry.

Public Canvass.

1609. SEC. 25. As soon as the polls of the election shall be finally closed the Inspectors shall immediately proceed to canvass the vote given at such election; and the canvass shall be public, and continue without adjournment until completed.

Manner of Canvass.

1610. SEC. 26. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the Inspectors, and opened so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed; and if, on comparison of the count with the poll lists and the appearance of such ballots, a majority of the Inspectors shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected, and carefully sealed up in an envelope, upon which shall be written the reason of their rejection, and shall be signed by the Inspectors, and placed back in the ballot box, to be retained with the other ballots, as provided in section twenty-nine of this Act.

Excess of Ballots.

1611. SEC. 27. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box after being purged as above, and one of the Inspectors, with his back turned to the box, shall publicly draw out and destroy therefrom so many ballots, unopened, as shall equal the excess.

Counting—Form of Returns.

1612. SEC. 28. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed the Clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes and the number he did receive, the number being expressed in writing at full length and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:

At an election, held at the house of A. B., in the town (or precinct) of-----,

in the county of _____, and the State of Nevada, on the _____ day of _____, A. D. _____, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit:

- A. B. had _____ votes for Member of Congress.
- C. D. had _____ votes for State Treasurer.
- E. F. had _____ votes for State Controller.
- G. H. had _____ votes for State Superintendent of Public Instruction.
- I. J. had _____ votes for Member of the State Senate.
- K. L. had _____ votes for Member of the Assembly.
- (And in like manner for any other person voted for.)

Certified by us:

M. N.,
O. P.,
Q. R.,

Inspectors of Election.

A. B.,
C. D.,

Clerks of Election.

Attest:

OATH OF INSPECTORS—RETURNS NOT CERTIFIED. When no question is made as to the right of electors to vote, and no question made as to the correctness of the returns made by the Inspectors of Election: *Held*, that the failure of Inspectors to take the oath of office, and from thoughtlessness, to certify to the returns, as required by law, would not justify the exclusion of the votes. *Stinson v. Sweeney*, 17 Nev. 310.

Inspectors Shall File and Make Returns—Manner of Delivery—Ballots Subject to Inspection. When.

1613. SEC. 29. The Inspectors shall file the ballots on a string, inclose and seal the same together with one of the tally lists and one of the poll books, under cover, directed to the Clerk of the Board of County Commissioners of the county in which such election was held, or such other officer as is herein provided, indorsed "Election returns"; *provided*, that if said Clerk of the Board of Commissioners, as County Clerk, or any one of the following named county officers was voted for office at the last election, he shall not be the custodian of such election returns; but such returns shall be directed and delivered to the county officer who was not a candidate and voted for office in the following order. Second—The County Recorder. Third—The County Treasurer. Fourth—The County Assessor. Fifth—The Chairman of the Board of County Commissioners. Sixth—One of the County Commissioners. And said custodian shall comply with the provisions of section thirty of this Act. The packet thus sealed shall be conveyed by one of the Inspectors or Clerks of Election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the Inspectors, and delivered to said Clerk of the Board of County Commissioners, or the county officer, as herein provided, at his office, within ten days from the close of the polls. The poll book, tally list, certified copy of register, ballot box and ballots thus inclosed and sealed shall, after the canvass of the votes by the Board of County Commissioners, be deposited in the office of the Clerk of the Board of Commissioners, and preserved until the next general election. The other poll book and tally list shall be deposited with one of the Inspectors of Election, to be determined by lot, if not otherwise determined, agreed upon, and said poll book and tally list, together with the poll book and tally list deposited with the Board of County Commissioners, shall be subject to the inspection of any elector, at any time thereafter who may wish to examine the same; *provided, however*, that the ballots so deposited with the Board of County Commissioners shall not be subject to the inspection of any one, except in cases of contested elections, and then only by the Judge, body or board before whom such election is being contested. *As amended, Stats. 1879, 117.*

Canvass of Votes—Certificate of Election—The Vote—Compensation of Election Officers.

1614. SEC. 30. On the tenth day (or if that day shall fall on Sunday, then

on the Monday following) after the close of any election, or sooner, if all the returns be received, the Board of County Commissioners shall proceed to open said returns and make abstracts of the votes. Such abstract of votes for Member or Members of Congress shall be on one sheet; the abstract for votes for members of the legislature shall be on one sheet; and the abstract of votes for district and state officers shall be on one sheet; and the abstract of votes for county and township officers shall be on one sheet. And it shall be the duty of the Board of County Commissioners to cause a certificate of election to be made out by the respective Clerks of said Board of County Commissioners to each of the persons having the highest number of votes for members of the legislature, district, county and township officers, respectively, and to deliver such certificate to the person entitled to it on his making application to said Clerk at his office; *provided*, that when a tie shall exist between two or more persons for the senate or assembly or any other county, district or township officer, any of said persons shall have the right to demand of the Board of County Commissioners a recount of all the ballots cast for them for the office for which they were candidates; and *provided further*, that if after said recount has been had, the vote between them or any of them shall still remain a tie, the Board of County Commissioners shall order their Clerk to give notice to the Sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the said Clerk of the said Board of County Commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate of election, stating therein the compensation to which the Inspectors and Clerks of Election may be entitled by law for their services, and lay the same before the Board of Commissioners at their next session; and the said board shall order the compensation aforesaid, if correct, to be paid out of the county treasury. *As amended, Stats. 1889, 42.*

BOARD OF CANVASSERS—FAILURE TO CANVASS VOTES AND ISSUE CERTIFICATE OF ELECTION FATAL TO THE RIGHT TO HOLD OFFICE. *State v. Meder, 22 Nev. 264.*

Transmission of Abstract—Justices of Supreme Court to Canvass—In Case of No Choice.

1615. SEC. 31. The Board of County Commissioners, after making the abstract of votes as provided in section thirty, shall cause their Clerk, by an order made and entered in the minutes of their proceedings, to make a copy of said abstract and forthwith transmit the same to the Secretary of State at the seat of government. If the Board of County Commissioners should neglect or refuse to make the order, as required by this Act, they, and each of them, shall be guilty of a misdemeanor in office, and shall, on conviction thereof, be liable to a fine of not less than one hundred dollars or more than five hundred dollars each, and imprisonment in the county jail for not less than ten and not more than one hundred days each, or both such fine and imprisonment, and shall be removed from office. And on the third Monday of December succeeding such election, the Chief Justice of the Supreme Court and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State and shall open and canvass the vote for Members of Congress, district and state officers; and the Governor shall grant a certificate of election to and commission the persons having the highest number of votes, and shall also issue proclamation declaring the election of such persons. But in case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes for the same office, the senate and assembly shall convene in the assembly chamber on the second Monday of February, at the next regular session of the legislature after such election, and by joint vote of both houses elect one of said persons to fill said office; *provided*, when an election for Electors of President and Vice-President of the United States takes place, the vote thereof shall be canvassed at the same time and in the manner aforesaid. *As amended, Stats. 1881, 40; 1889, 31.*

Defect or Informality in Returns—Certificate Not Withheld.

1616. SEC. 32. No certificate shall be withheld on account of any defect or

informality in the returns of any election, if it can with reasonable certainty be ascertained from such returns what office is intended, and who is entitled to such certificate; nor shall any commission be withheld by the Governor, or Board of County Commissioners on account of any such defect or informality of any returns made to the office of the Secretary of State or to the Board of County Commissioners.

Delayed Returns—Messenger, etc.

1617. SEC. 33. If the returns of the election of any county in the state shall not be received at the office of the Secretary of State on or before said third Monday of December succeeding such election, the said Secretary may forthwith send a messenger to the Clerk of the Board of County Commissioners of such county, whose duty it shall be to furnish said messenger with a copy of such returns; and the said messenger shall be paid out of the treasury of such county the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county. Whenever it shall be necessary, in the opinion of the Board of County Commissioners, to employ a messenger to convey the returns to the seat of government, and deliver them to the Secretary of State, the person performing such service shall also be entitled to receive, as compensation, mileage at the rate of thirty cents per mile, computing the distance from the county seat to the seat of government by the usual traveled route.

District Returns, How Made—Abstract of Votes.

1618. SEC. 34. When two or more counties are united in one senatorial, representative, or judicial district for the election of any officers, the Board of County Commissioners of each county shall canvass the votes, according to law, of the voters of their respective counties for said officer or officers; and the Commissioners of the county whose initial is the lowest on the alphabet shall transmit to the Commissioners of the county of the highest initial a copy of the abstract of the votes for such officer or officers, when the said last Commissioners shall make a final abstract and aggregate of said votes, and shall proceed to cause to be issued certificates of election, and otherwise to act as is provided in this and the two preceding sections.

County Clerk's Duties in Transmitting Abstract—Penalty for Neglect or Failure.

1619. SEC. 35. Whenever the returns are required to be transmitted by one Clerk of a Board of County Commissioners to the Secretary of State, it shall be the duty of such Clerk, if not otherwise directed by the Board of County Commissioners, to deliver the same to some Postmaster of the county, at the postoffice, to be transmitted by mail, taking from such Postmaster, if it can be obtained, a certificate setting forth the time when such reports were deposited in the postoffice, which certificate the Clerk shall file in his office. If the Clerk of the Board of County Commissioners should neglect, or refuse to make out and transmit, the returns, or abstract, as required by this Act, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, or more than five hundred dollars, and imprisonment in the county jail for not less than one month, or more than six months, or both such fine and imprisonment, in the discretion of the court, and shall be removed from office. *As amended, Stats. 1881, 41.*

Per Diem of Inspector and Clerk of Election—Mileage of Messenger.

1620. SEC. 36. There shall be allowed out of the county treasury of such county to each Inspector and each Clerk of Election five dollars per diem, but in no case to exceed twenty dollars for all services required by law to be performed by each of them at any one election. And to the person carrying the poll books from the place of election to the Clerk's office, and to the Clerk of the Board of County Commissioners for attending at another county to canvass votes, the sum of fifteen cents per mile for going and fifteen cents per mile for returning, to be paid out of the county treasury. *As amended, Stats. 1889, 35; 1899, 99.*

Contesting Election—By Whom Made—For What Causes.

1621. SEC. 37. Any elector, of the proper county, may contest the right of any person declared duly elected to an office exercised in and for such county; and, also, any elector of a township may contest the right of any person declared duly elected to any office in and for such township, for any of the following causes: First—For malconduct on the part of the Board of Inspectors, or any member thereof. Second—When the person whose right to the office is contested was not at the time of election eligible to such office.

For Malconduct of Inspectors.

1622. SEC. 38. When any election, held for an officer exercised in and for a county, is contested on account of any malconduct on the part of the Board of Inspectors of any precinct, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct shall change the result as to such office in the remaining vote of the county.

Statement, When to File—What to State.

1623. SEC. 39. When any elector shall choose to contest the right of any person declared duly elected to such office, he shall, within forty days thereafter, file with the Clerk of the district court a written statement, setting forth, specifically: First—The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct (as the case may be), in which such election was held. Second—The name of the person whose right to the office is contested. Third—The office. Fourth—The particular cause or causes of such contest. Said statement shall be verified by the affidavit of the contesting party that the matters and things therein contained are true, to the best of his knowledge and belief.

Proceedings When Contest for Illegal Votes.

1624. SEC. 40. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were given to the person whose election is contested in the specified precinct or precincts, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes except such as are specified in such list; *provided*, that in all cases of contested elections, the district court of the respective districts shall have original jurisdiction to try and determine all such cases, and may, by mandamus or otherwise, obtain all documentary evidence required by either of the parties litigant.

1. SUFFICIENCY OF COMPLAINT UNDER ABOVE SECTION. Greeley v. Holland, 14 Nev. 320; Egan v. Jones, 21 Nev. 433.
2. NOTICE OF ILLEGAL VOTES TO BE GIVEN. In an election contest the time of the notice required to be given as to the illegal votes relied upon, must be computed by including the first day and excluding the last, and the notice must be given three days before the trial commences, without regard to the fact whether any evidence is introduced on the first day of the trial. Stinson v. Sweeney, 17 Nev. 310.
3. CONTESTED ELECTION—BALLOTS PRIMARY AND CONTROLLING EVIDENCE, but it must appear that they have been preserved in the manner and by the officers prescribed by the statute. Schneider v. Bray, 22 Nev. 272.
4. BALLOTS AS EVIDENCE—EXCEPTION TO RULE. The rule that, as between the ballots and a canvass of them, the ballots control, has no application where the ballots have been tampered with after they had been deposited in the box. Dennis v. Caughlin, 23 Nev. 188.
5. NEW TRIAL AND APPEAL. Regulated by Civil Practice Act. Lynip v. Buckner, 22 Nev. 426.

Statement Not Rejected or Proceedings Dismissed for Want of Form.

1625. SEC. 41. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed, by any court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or cause for which such election is contested.

Time and Place for Hearing Contest, How Fixed.

1626. SEC. 42. Upon such statement being filed, it shall be the duty of the Clerk of the district court to inform the Judge thereof, who shall fix the time and place to hear and determine such contested election; and the Clerk shall give notice thereof, not less than ten nor more than twenty days from the date of such notice, to the parties contesting, which said notice shall be served by the Sheriff of the county upon the respective parties, as in other cases.

Witnesses, Subpenas For, etc.

1627. SEC. 43. The said Clerk shall issue subpenas and subpenas *duces tecum*, as in civil actions at law, for witnesses in such contested election, at the request of either party, which shall be served by the Sheriff as other subpenas; and the district court shall have full power to issue attachments to compel the attendance of witnesses who shall fail to attend, who shall have been duly subpenaed.

Certificate of Election—To Whom Shall Issue.

1628. SEC. 44. Upon the certified copy of a judgment of the district court, or a certified copy of the judgment of the supreme court, as the case may be, the Clerk of the Board of County Commissioners shall issue a certificate to the person declared to be entitled to such certificate of election.

Fees of Clerk, Sheriff and Witnesses.

1629. SEC. 45. The Clerk, Sheriff, and witnesses shall receive, respectively, the same fees from the party against whom the judgment is given as are allowed for similar services in the district court.

Office, When Becomes Vacant.

1630. SEC. 46. Whenever an election shall be annulled and set aside by the judgment of the district court, and no appeal has been taken therefrom within thirty days, such certificate, if any has been issued, shall thereby be rendered void, and the office become vacant.

Contest of Election of District Judge.

1631. SEC. 47. In case of any contest in regard to any election to fill the office of District Judge, such contest shall be tried in like manner before the district court of the district nearest adjoining thereto.

District Attorney May Bring Action for Unlawfully Holding Office.

1632. SEC. 48. Any such action may be brought by the District Attorney, in the name of the State of Nevada, upon his own information, or upon the complaint of any private party, against any person who unlawfully holds any public office within the state; and it shall be the duty of the District Attorney to bring such action whenever he has reason to believe that any such office is unlawfully held or exercised by any person, or when he is directed so to do by the Governor.

When Defendant Arrested and Held.

1633. SEC. 49. Whenever such action is brought, the District Attorney, in addition to the statement and cause of action, may also set forth in the complaint the name of the person rightly entitled to the office or franchise, with a statement of his right thereto; and in such case, upon proof by affidavit or otherwise, that the defendant has received fees or emoluments belonging to the office or franchise, by means of his usurpation thereof, an order may be granted by a Judge of the Supreme Court, or a District Judge, for the arrest of such defendant

and holding him to bail; and thereupon he may be arrested and held to bail in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

Damages Recoverable.

1634. SEC. 50. If the judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office or franchise by the defendant.

One Action Brought Against Several Persons.

1635. SEC. 51. When several persons claim to be entitled or elected to the same office, one action may be brought by or against all such persons, in order to try their respective rights to such office.

CONTEST FOR MEMBERS OF THE LEGISLATURE.

Conduct Of.

1636. SEC. 52. In case of contest for Senator or Assemblyman in any county in this state, the party contesting shall file a statement in the office of the County Clerk of the county in which such Senator or Assemblyman may be a resident, a concise statement of the grounds upon which he intends to rely, which statement shall be verified by affidavit; and it shall be the duty of the Clerk to issue a commission, directed to a Justice of the Peace of such county, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the filing of such papers, for the purpose of taking the deposition of such witnesses as the parties to such contest may wish to examine, and notice shall be served upon the person whose right to such office is contested, by the Sheriff of the county, the same as provided for by law in like cases. *As amended, Stats. 1899, 114.*

Justice of the Peace Empowered to Issue Subpena—Written Testimony.

1637. SEC. 53. Said Justice of the Peace shall have power at any time to issue subpoenas for witnesses at the request of either party, to be served by the Sheriff, as other subpoenas; and said Justice shall have the same power to issue attachments and assess fines against witnesses as is given to Justices of the Peace in other trials instituted before him; and all testimony taken before him during such proceeding shall be in writing, and shall be certified to and forwarded by mail or express, or delivered to the Clerk of the county. *As amended, Stats. 1899, 115.*

County Clerk to Seal and Transmit All Papers to Secretary of State.

1638. SEC. 54. It shall be the duty of the said Clerk to seal up such depositions, together with the original statement of the grounds of such contest, and a copy of the notice served upon the party whose right is contested, and the commission issued to the Justice of the Peace, and transmit the same by mail to the Secretary of State, indorsing thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried. *As amended, Stats. 1899, 115.*

SEC. 55 repealed, Stats. 1899, 115.

Duty of Secretary of State.

1639. SEC. 56. It shall be the duty of the Secretary of State to deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day after the organization of the legislature next after taking such depositions; and such presiding officer shall immediately give notice to said house that said papers are in his possession.

When Either Party May Take Depositions.

1640. SEC. 57. At any time after notice of any contest shall be given, and

before the trial of such contested election before the proper branch of the legislature, it may be lawful for either party to such contest to take depositions, to be read on the trial thereof in like manner and under the same rules as are allowed and required in cases of depositions to be read on any trial pending in the district court; and such depositions, when thus taken, shall be sealed up by the officer taking the same and directed to the Secretary of State, who shall keep the same, unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding section.

CONTESTED ELECTION. The contest for members of the legislature can only be made in pursuance of the provisions of the statute (Sections 52-57, inclusive). The proceedings are special and under our statute the courts have no jurisdiction. *Garrard v. Gallagher*. 11 Nev. 382.

SPECIAL REMEDY. Where the statute gives a special remedy it must be followed, and the proceedings thereunder in contested election cases are substantially different from any common law remedy. *Id.*

FOR CONTESTING THE ELECTION OF STATE OFFICERS.

Who May Contest, and How.

1641. SEC. 58. Any qualified elector of the state may contest the election of any person declared duly elected to any state office within this state by filing a specification of the grounds of such contest with the Clerk of the Supreme Court, which specification shall be verified by oath or affirmation, and it is hereby made the duty of the Attorney-General to prosecute such action in the name of the people of the state, before the supreme court, who shall have original jurisdiction in such cases; the Justices, or either of them, shall have power to issue such process as may be necessary to the complete hearing and final determination of such action.

In effect unconstitutional. *McMillan v. Sadler*, 25 Nev.

Causes for Removal from Office.

1642. SEC. 59. If any person now holding or who shall hereafter hold any office in this state, who shall refuse or neglect to perform any official act in the manner and form as now prescribed by law, or who shall be guilty of any malpractice or malfeasance in office, shall be removed therefrom as herein prescribed.

Malfeasance in Office, Proceedings For.

1643. SEC. 60. Whenever any complaint in writing, duly verified by the oath of any complainant, shall be presented to the district court, alleging that any officer within the jurisdiction of said court has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office, or has refused or neglected to perform the official duties pertaining to his office as prescribed by law, or has been guilty of any malpractice or malfeasance in office, it shall be the duty of the court to cite the party charged to appear before him on a certain day, not more than ten nor less than five days from the time when said complaint shall be presented, and on that day, or some subsequent day not more than twenty days from that on which said complaint is presented, shall proceed to hear, in a summary manner, the complaint and evidence offered by the party complained of, and if, on such hearing, it shall appear that the charge or charges of said complaint are sustained, the court shall enter a decree that said party complained of shall be deprived of his office, and shall enter a judgment for five hundred dollars in favor of the complainant and such costs as are allowed in civil cases.

Decree Transmitted.

1644. SEC. 61. It shall be the duty of the Clerk of the court in which such proceedings are had to transmit, within three days thereafter, to the Governor of the state, or Board of County Commissioners (as the case may be) of the proper

county, a copy of any decree or judgment declaring any officer deprived of any office under this Act; and it shall be the duty of the Governor or such Board of County Commissioners (as the case may be) to appoint some person to fill said office until a successor shall be selected or appointed and qualified; and it shall be the duty of the person so appointed to give such bond and security as are prescribed by law and pertaining to such office.

On Appeal, Office to Be Filled.

1645. SEC. 62. In case judgment of the district court, as herein provided, shall be against the officer complained of, and an appeal taken from the judgment so rendered, the officer so appealing shall not hold the office during the pending of such appeal; but such office shall be filled as in case of a vacancy.

BY CRIMINAL ACTION.

Misconduct in Office—Presentment.

1646. SEC. 63. An accusation, in writing, against any district, county, or township officer, for willful misconduct in office, may be presented by the grand jury of the county, for which such officer accused is elected or appointed, which accusation shall state the offense charged, and shall be delivered by the foreman of the grand jury to the District Attorney of the county, who shall cause a copy thereof to be served upon the defendant, and require, by notice in writing, of not less than ten days, that he appear before the district court then sitting, or at the next term, and answer the accusation. The original accusation shall then be filed with the Clerk of the district court.

Defendant to Appear and Answer.

1647. SEC. 64. The defendant must appear at the time appointed in the notice, and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Answer, How Made.

1648. SEC. 65. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or to any allegation therein, or by denying the truth of the same.

Objections in Writing.

1649. SEC. 66. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specified form, it being sufficient if it present intelligibly the grounds of the objection.

Denial Oral and Without Oath.

1650. SEC. 67. If he denies the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

Answer Forthwith.

1651. SEC. 68. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

Judgment on Plea of Guilty—Trial, How Conducted.

1652. SEC. 69. If the defendant plead guilty, and refuses to answer the accusation, the court shall render judgment of conviction against him. If he deny the matter charged, the court shall immediately, or as soon thereafter as practicable, proceed to try the accused, which trial shall be conducted in all respects and in like manner as trial upon indictment for other offenses.

Judgment on Conviction—How Entered.

1653. SEC. 70. Upon a conviction, the court shall immediately, or within five days, as it may appoint, pronounce judgment that the defendant be removed from office; but to warrant a removal, the judgment must be entered upon the minutes, assigning thereon the causes of removal.

Appeal, How Taken.

1654. SEC. 71. From a judgment of removal, an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action; but until such judgment be reversed the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of a vacancy.

Proceedings for Removal of District Attorney.

1655. SEC. 72. The same proceedings may be had on like grounds for the removal of a District Attorney, except that the accusation shall be delivered to the District Judge of the district, who shall thereupon appoint some one to act as a prosecuting officer in the matter, or shall place the accusation in the hands of the District Attorney of the nearest adjoining district, and require him to conduct the proceedings.

BY IMPEACHMENT.

Impeachment, Articles Of.

1656. SEC. 73. When a civil officer of the state is impeached by the assembly for misconduct in office, the articles of impeachment shall be delivered to the President of the Senate, who shall cause a copy thereof with the notice to appear and answer the same, at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

Service on Defendant.

1657. SEC. 74. The service must be upon the defendant personally; or, if he cannot, upon diligent inquiry, be found within the state, the senate, upon due proof of that fact, may order that publication be made in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Failure to Appear.

1658. SEC. 75. If the defendant do not appear, the senate, upon proof of personal service or publication, as provided in the last two preceding sections, may, of their own motion or for cause shown, assign another day for hearing the impeachment, or may then, or at any other time which they may appoint, proceed, in the absence of the defendant, to trial and judgment.

Answer, How Made.

1659. SEC. 76. When the defendant appears, he must answer to the articles of impeachment, which he may do either by objecting to the sufficiency of the same or any article thereof, or denying the truth of the same.

Objections in Writing—Denial.

1660. SEC. 77. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journal.

Judgment on Plea of Guilty—Trial.

1661. SEC. 78. If he plead guilty or refuse to plead, the senate shall render judgment of conviction against him. If he deny the matter charged, the senate shall, at such time as they may appoint, proceed to try the impeachment. The Chief Justice of the Supreme Court shall preside over the senate while sitting to try the Governor or Lieutenant-Governor upon impeachment, and in all other cases the President of the Senate.

Oath Administered to President and Senators.

1662. SEC. 79. At the time and place appointed, before the senate proceed to act on the impeachment, the Secretary shall administer to the President of the Senate or Chief Justice (as the case may be), and the President of the Senate or Chief Justice (as the case may be) to each of the members of the senate then

present, an oath or affirmation, truly and impartially to hear, try, and determine the impeachment.

Jud ment.

1663. SEC. 80. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office, or class of offices, or any office of honor, trust, or profit under the constitution and laws of this state.

Two-Thirds Vote—Disqualifications, etc.

1664. SEC. 81. If judgment of suspension be given on the votes of two-thirds of the members elected to each branch of the legislature, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees, or emoluments of the office; and the Judge, District Attorney, or any state officer complained of, shall be served with a copy of the complaint against him, and have an opportunity of being heard in person or by counsel, in his defense; *provided*, that no member of either branch of the legislature shall be eligible to fill the vacancy occasioned by such removal.

When Against President of Senate.

1665. SEC. 82. When articles of impeachment shall be presented against the President of the Senate, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any state officer whose office is created by the constitution or laws of this state, the Governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the Governor until the acquittal of the party impeached, or in case of his removal, then until the vacancy be filled as provided by law.

Fraudulent Action of Officers of Election—Felony.

1666. SEC. 83. Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, shall be deemed guilty of felony, and punishable by fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Refusing to Take Oath or to Answer Questions—Misdemeanor.

1667. SEC. 84. Every person who, after being required by the Board of Judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board touching his right or the right of any other person to vote, is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

Fraudulent Voting, etc., a Felony.

1668. SEC. 85. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds or attempts to add any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully provided, other ballots while the same are being counted or canvassed, or abstracts any ballots lawfully polled, at any other time with intent to change the result of such election, or carries away or destroys, or attempts to carry away or destroy, any poll list or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting

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such canvass, or with voters lawfully exercising their right of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, shall be guilty of felony, punishable by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Fraudulent Attempt to Vote a Misdemeanor.

1669. SEC. 86. Every person not entitled to vote who fraudulently attempts to vote, or who being entitled to vote, attempts to vote more than once at any election, or who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, shall be guilty of a misdemeanor, punishable by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

For Prying Into Secrecy of Ballot, etc., a Felony.

1670. SEC. 87. Every Inspector, Judge, or Clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot box, or makes or places any mark or device on any folded ballot, with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such Inspector, Judge, or Clerk has fraudulently or illegally discovered to have voted for by such elector, is punishable by a fine of not less than fifty nor more than five hundred dollars. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward, when no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns of a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the state prison for a term of not less than two nor more than ten years.

Corrupting or Intimidating Electors, etc., a Felony.

1671. SEC. 88. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence an elector in giving his vote, or to deter him from giving the same, or attempts by any means to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at such election by deceiving and causing such elector to vote for a different person or any office than he intended or desired to vote for, or who, being Inspector, Judge, or Clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote different from what such elector intended or desired to vote, shall be guilty of felony, punishable by fine not exceeding one thousand dollars, or imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Certain Acts Are Felonies.

1672. SEC. 89. Every person who, with intent to promote the election of himself or any other person, either: First—Furnishes entertainment at his expense to any meeting of electors previous to or during an election. Second—Pays for, procures, or engages to pay for any such entertainment. Third—Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm. Fourth—Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election

of any candidate, except for the expenses of holding and conducting public meetings, for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election, shall be guilty of a misdemeanor, punishable by fine not exceeding five hundred dollars or imprisonment not exceeding six months in the county jail.

Offering Bribe—Felony.

1673. SEC. 90. Every person who gives or offers a bribe to any officer or member of any legislature, caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, shall be guilty of felony, punishable by a fine not exceeding five thousand dollars or ten years' imprisonment in the state prison, or both such fine and imprisonment.

Offering to Appoint or Procure Appointment to Any Office in Consideration of Votes—Felony.

1674. SEC. 91. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, position, or employment as an inducement or consideration to any person to vote for, or procure, or aid in procuring the election of such candidate, or person not being a candidate, who communicates any offer made in violation of this and the preceding section, to any person with intent to induce him to vote for, or to procure or aid in procuring the election of the candidate, shall be deemed guilty of felony, punishable by imprisonment not exceeding five years or a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Selling Liquor on Election Day—Misdemeanor.

1675. SEC. 92. No person shall sell, give away, or furnish, or cause to be sold, given away, or furnished, either for or without pay, within this state, on any day upon which any general election is held, nor within the limits of any county or city on any day upon which any special or municipal election is held therein, any spirituous, malt, or fermented liquors or wines; and any one so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court; and it shall be the duty of Judges of the district courts of the several judicial districts in this state, to specially give this Act in charge to every grand jury impaneled in their respective districts.

Governor to Offer Rewards for Arrest and Conviction.

1676. SEC. 93. The Governor is hereby authorized and directed, at least thirty days previous to any general election and fifteen days previous to any special election, to issue a proclamation offering a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of this Act, when the crime is a misdemeanor; and a reward of two hundred dollars for the arrest and conviction of any person guilty of a felony, as herein provided; and such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of ten thousand dollars, payable out of any moneys in the state treasury not otherwise appropriated. And all moneys collected under the provisions of this Act shall revert to the general school fund of the several counties where such case was brought.

Secretary of State to Issue This Act in Pamphlet Form.

1677. SEC. 94. It shall be the duty of the Secretary of State to cause to be printed in pamphlet form a requisite number of copies of this Act, with marginal notes and properly indexed, a suitable number of which shall be forwarded by him to the County Clerks of the several counties of this state, at least sixty days

previous to the holding of any general election, and at least twenty days previous to the holding of any special election; and it is hereby made the duty of the said County Clerks to inclose in each and every ballot box sent out by them to be used at the various precincts of their respective counties, five or more copies of said Act, as in their judgment they may deem proper.

Acts Repealed.

SEC. 95. "An Act relating to elections, the manner of conducting and contesting the same, fraud upon the ballot box, destroying or attempting to destroy the ballot box, illegal or attempted illegal voting and misconduct at elections," approved March ninth, eighteen hundred and sixty-six [p. 210], and an Act amendatory of the aforesaid Act, approved February twenty-fifth, eighteen hundred and sixty-nine [p. 77]; also, an Act supplementary to the aforesaid Act, approved March fifth, eighteen hundred and sixty-nine [p. 135], are hereby repealed.

An Act to regulate primary elections and to protect the same from fraud.

Approved February 5, 1883, 28.

Resolution Adopted—What to Set Forth.

1678. SECTION 1. Any committee or body authorized by the rules or customs of a political association, organization, or party to call elections of or for such association, organization, or party, in calling such election, shall, at the time of making the call, adopt a resolution which shall set forth: First—That a primary election will be held, giving the time when and the place or places where such election will be held, and the hours between which the polls shall be kept open. Second—The names of the persons to constitute the Election Board at each polling place. If the persons named by the committee be not present, or decline to serve, then such officers shall be appointed as provided by the election law of this state. Third—The object for which the election is called. Fourth—The qualifications required for voters in addition to those prescribed by the election law of this state.

Notice and Publication.

1679. SEC. 2. The notice of the election shall contain a copy of the resolution and be signed by the Secretary of the committee or body, and be published at least one week prior to the time fixed for the election in some newspaper published in the nearest precinct thereto in the county, or shall be conspicuously posted in three public places in the precinct where such election is to be held at least one week prior to the time fixed for such election.

Election Board, How Appointed—Judges and Inspectors.

1680. SEC. 3. The number of officers to constitute the Election Board shall be fixed by the committee, and shall not be less than three nor more than five, and if the committee be divided, the majority shall appoint a majority of the officers, and the minority shall appoint the greatest minority thereof, and the persons so appointed shall each act in the capacity of Judges, and either may act as Inspector at such election. They shall be legal voters in the precinct where and at the time they serve as such officers, and shall each be sworn in the manner provided by the election law of this state to fairly, honestly, and impartially conduct the election, and shall open and close the polls at the time named in the resolution, and shall conduct and complete the canvass of votes and make returns thereof without unnecessary delay. They may administer oaths and call and examine witnesses touching the qualifications of any person offering to vote. They shall appoint two competent persons to act as Clerks of such election, who shall each be sworn to faithfully, honestly and fairly perform the duties imposed on him by law.

Challenge, Grounds of—Challenge Determined—Vote Rejected.

1681. SEC. 4. In addition to the grounds of challenge allowed by the election

law of this state, and herein provided for, any person offering to vote at such election may be challenged upon the ground that he does not possess the political qualifications prescribed in the resolution, and such challenge shall be tried and determined by the Board of Election, who may administer an oath to such challenged person, and may ask any question tending to prove or disprove the challenge. The board shall reject any vote offered by any person not a legal voter, or who does not possess the qualification required by the resolution.

Voting, Misdemeanor, When.

1682. SEC. 5. If any person does not possess the qualification of a voter at a general election held throughout the state and the political qualification required in the resolution of the committee or body, shall vote or offer to vote at such primary election, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than five hundred dollars, and in default of the payment of such fine shall be imprisoned in the county jail for a period not exceeding ninety days.

Perjury, When.

1683. SEC. 6. Any person offering to vote who shall, under oath administered by any of the officers of such election, willfully, untruly or falsely answer any pertinent question asked by any officer or challenger, or make any misstatement intended to mislead the officers of the election for the purpose of voting, shall be guilty of perjury, and on conviction shall suffer all the penalties provided by law for that offense.

Double Voting a Misdemeanor.

1684. SEC. 7. Any person who shall vote or offer to vote at such primary election who has voted at the same or any other precinct on the same day and for the same purpose shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not exceeding ninety days.

Fraudulent Voting a Misdemeanor—Punishment.

1685. SEC. 8. Any officer or Clerk of such primary election who shall knowingly permit any fraudulent vote to be cast, or shall knowingly receive and deposit in the ballot box any ballot offered by any person not qualified to vote in that precinct and at that election, or of any person who has previously voted at the same election, or shall in any way knowingly procure any disqualified person to vote or attempt to vote, such officer or Clerk shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not exceeding ninety days.

Failure to Perform Duty—Misdemeanor.

1686. SEC. 9. Any person intrusted with the performance of any duty under the provisions of this Act who, after he shall have consented and begun to perform the same, willfully neglects or refuses to perform such duty, or who fraudulently acts in contravention or violation of any of the provisions of this Act, or who performs or assists in any act, whether in voting, or in receiving or depositing ballots, or in caring for the ballots or ballot box, or who shall willfully mis-call or misread or fail to call or read the name of any person whose name is voted on any ballot, or willfully enters upon any tally list a greater or less number of votes for any person than such person actually received, with intent to change the result of such election, or impair or improve the chances of election of any candidate, or knowingly permits any illegal voting or fraud in any manner, shall be guilty of a misdemeanor, and on conviction shall be punished by fine of not less than fifty dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not exceeding six months.

Refusal to Take Oath—Vote Excluded.

1687. SEC. 10. Any person offering to vote at any primary election, who,

after being required by any member of the board, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question touching his qualifications as an elector and right to vote, shall be excluded from voting at such election.

Bribery—Misdemeanor—Informer Free from Prosecution.

1688. SEC. 11. If any person shall, at any primary election herein provided for, or prior thereto, buy, or offer to buy, any vote, or give, or offer to give, any reward, employment, or consideration of any character, or shall in any manner intimidate or attempt to intimidate, by any threat or promise, for the purpose of influencing any voter to cast his vote in favor of any person or question, or against any person or question; or if any person shall at such election for any consideration vote or offer to vote any particular ticket, or for any particular person or question, or against any particular person or question, or in the real or supposed interest of any person or question, or if any person shall, at or prior to such election, give or receive any bribe, reward, or promise, which is given or received with the view, intention, or expectation that the voter will be influenced thereby to cast his vote in any particular way, whether the vote be cast or not, or changed thereby or not; or if any person shall, at such election, give or receive any consideration for voting, or to refrain from voting, such person shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not exceeding six months; and any person guilty of any violation of the provisions of this Act may inform upon any other person guilty of violating the provisions thereof, and such informant, provided he be the first person giving such information, shall file a complaint, and after appearing and testifying thereto in the proper court having jurisdiction thereof, shall be free from prosecution for any complicity his information may disclose, or that may be disclosed at any trial instituted upon information given and complaint filed by him. A sum equal to the fine imposed shall be taxed as costs in the case and allowed to the informant.

Stuffing Ballot Box, Mixing Ballots, etc.—Misdemeanor.

1689. SEC. 12. Any person who knowingly hands in two or more ballots folded together, or adds or attempts to add any ballot to those legally polled, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or who adds to or mixes with, or attempts to add to or mix with the ballots lawfully provided and cast, other ballots while the votes are being counted or canvassed, or at any other time, or at any time abstracts any ballots lawfully polled with the intent to change the result of such election, or to change the count thereat in favor of or against any person voted for at such election, or carries away or destroys, or attempts to carry away or destroy, any tally list or ballots or ballot box for the purpose of affecting the returns, or of breaking up or invalidating such election, or who willfully detains, mutilates or destroys any such election returns, or in any manner interferes with the officers holding such election, or conducting the canvass, or with voters lawfully exercising their right of voting at such election as to prevent such election or canvass from being peaceably held and fairly conducted, shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not less than sixty days nor exceeding six months.

Forging or Counterfeiting Returns a Misdemeanor.

1690. SEC. 13. Any person who forges or counterfeits returns of any primary election purporting to have been held at a precinct, town or ward, where no election was in fact held, or who substitutes forged or counterfeit returns of a primary election in place of true returns where an election was actually held, shall be guilty of a misdemeanor, and on conviction shall be fined not less than one hun-

dred dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not less than sixty days nor exceeding six months.

Lists, Ballots and Poll Books to Be Delivered to Secretary—Certificates of Election.

1691. SEC. 14. After counting the votes and signing the lists the Judges must cause the ballots and one copy of the lists, together with the poll book, to be delivered to the Secretary of the committee or body which called the election, and one of the Judges must retain the other list for twenty days after said primary election. The Board of Election must issue certificates of election to all persons who are chosen to fill any position by the vote of one precinct alone, and the committee or body who called the election shall issue certificates to persons elected by the votes of more than one precinct.

Lack of Registration Does Not Disqualify.

1692. SEC. 15. The committee or body calling a primary election shall have privilege to prepare copies of the register for each precinct, and if the time of registration has not expired at the time of holding the primary election, actual registration shall not be necessary to qualify a voter or officer when such voter or officer is qualified in every other respect and entitled to register on the day such primary election is held, and will be entitled to vote at the next ensuing election.

An Act relating to elections and to more fully secure the secrecy of the ballot.

Approved March 13, 1891, 40.

Ballots Furnished by County.

1693. SECTION 1. All ballots cast in elections for public officers within this state shall be printed and distributed at public expense, as hereinafter provided. The printing of general tickets and cards of instruction for the electors of each county, and the delivery of the same to the election officers, as provided for in this Act, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses, and in case of separate elections for city, town or district officers, the printing and delivery of tickets and cards of instruction shall be a charge upon the city, town or district in which said tickets and cards are to be used, the payment of which shall be provided for in the same manner as the payment of other city, county or district expenses.

Nominations, How Made—Convention Defined.

1694. SEC. 2. Any convention, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public offices, to be filled by election within the state. A convention within the meaning of this Act is an organized assemblage of delegates representing a political party, which, at the last election, before the holding of such convention, polled at least three per cent of the entire vote cast in the state, county, district or other political division, for which the nomination is made.

Nominations, How Certified.

1695. SEC. 3. All nominations made by any such convention shall be certified as follows: The certificate of nomination, which must be in writing, shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate the party or principle which such convention represents. It shall be signed by the Chairman and Secretary of such convention, who shall add to their signatures their respective places of residence, and make oath, before an officer authorized to administer the same, that the matters stated in such certificate are true to the best of their knowledge and belief, and a certificate of the said oath shall be annexed to said certificate of nomination.

Nominations Otherwise Than by Conventions, How Made.

1696. SEC. 4. A candidate for public office may be nominated otherwise than by a convention in the manner following: A certificate of nomination containing the name of the candidate to be nominated, with the other information required to be given in the certificate provided for in section three of this Act, shall be signed by electors residing within the district or political division for which candidates are to be presented equal in number to at least ten per cent of the entire vote cast at the last preceding election in the state, district or political division for which the nomination is to be made; *provided*, that such certificate shall not be valid unless signed by five voters. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made are true to the best of his knowledge and belief, and a certificate of such oath shall be annexed. Such certificate of nomination shall have the same effect as the certificate of nomination made by a party convention. *As amended, Stats. 1893, 113.*

Certificates Filed With Secretary of State.

1697. SEC. 5. Certificates of nomination of candidates for offices to be voted for by the electors of the entire state, shall be filed with the Secretary of State. Certificates of nomination of candidates for all other public offices shall be filed with the Clerks of the respective counties wherein the officers are to be voted for and where a district embraces more than one county, such certificate shall be filed with the Clerk of each of said counties.

Restrictions in Making Nominations.

1698. SEC. 6. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating, under the provisions of section four of this Act, more than one nominee for each office to be filled, and no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office, shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office.

Certificates of Nomination, When Filed—Vacancy, How Filled.

1699. SEC. 7. Certificates of nomination required to be filed with the Secretary of State shall be filed not more than sixty days nor less than fifty days before the day of election when the nomination is made by a convention, and not more than sixty days and not less than forty-five days before the day of election when the nomination is made under the provisions of section four of this Act. Certificates of nomination required to be filed with the County Clerks shall be filed not more than fifty days nor less than forty days before the day of election, when the nomination is made by a convention, and not more than fifty days nor less than thirty days before the day of election, when the nomination is made under the provisions of section four of this Act. Should a vacancy occur from any cause in the list of nominees for any office, such vacancy may be filled at any time before the day of election by the convention or by a committee to which the convention has delegated power to fill such vacancies, or by petitioners as provided for by section four of this Act. The Chairman and Secretary of such convention, or of such committee, or such petitioners, shall make out and file with the proper officer a certificate setting forth the name of the person nominated to fill such vacancy, the office for which he is nominated, the name of the person for whom the new nominee is to be substituted, and such further information as is required to be given in an original certificate of nomination. When such certificate is filed the officer with whom it is filed shall substitute the name of the person therein for the original nominee, by printing, if practicable, or by

writing the name of the person there substituted. *As amended, Stats. 1891, 88; 1893, 113.*

McMillan v. Sadler, 25 Nev.

Secretary of State to Certify Names—County Clerks to Have Ballots Printed.

1700. SEC. 8. Not less than thirty-five days before an election to fill any public office, the Secretary of State shall certify to the County Clerk of each county within this state the name of each person and the name of the office for which he is nominated, as specified in the certificate of nomination filed with him. *As amended, Stats. 1893, 113.* (Section four.) The County Clerks of the several counties of this state shall supervise the printing of the ballots, and such ballots, shall be printed at some newspaper or printing office in the county where the ballots are to be voted, and in case there is no newspaper or printing office in the county in which the work can be done, then said Clerk is hereby authorized, empowered and directed to have said printing done in any newspaper or printing office in the state; *provided*, that the cost of printing said ballots shall not exceed the sum of fifty dollars per thousand. *As supplemented, Stats. 1893, 114, and amended, Stats. 1899, 92.*

Nominations Published.

1701. SEC. 9. Not less than ten days before an election to fill any public office or offices, the County Clerk shall cause to be published all the nominations certified to or filed with him. Said nominations shall be published in a newspaper printed within the county. When no newspaper is printed within the county, the publication shall be made by posting a copy of the ballot in a public place in each election precinct within the county, one of which copies shall be posted at the court house door. When publication is made by printing in newspapers, at least two publications by such newspaper shall be required, one of which shall appear in the last regular issue of such paper before election day.

Duties of Secretary of State—Constitutional Amendment.

1702. SEC. 10. When a proposed constitution, constitutional amendment or other question is to be submitted for popular vote, the Secretary of State shall certify the same to the several County Clerks, and said County Clerks shall publish the same as provided in section nine of this Act.

Ballots, How Furnished—Paper.

1703. SEC. 11. It shall be the duty of the County Clerk to provide printed ballots for every election for public offices, in which any voters within the county participate, and to cause to be printed in the ballot prescribed herein, the name of each and every candidate whose name has been certified to, or filed with him, as provided in this Act. Ballots other than those printed, as provided in this Act, shall not be cast, or counted in any election. All ballots shall be printed on tinted paper, furnished by the Secretary of State. It shall be the duty of the Secretary of State to obtain, and keep on hand, a sufficient supply of such paper for ballots, and to furnish the same in quantities ordered to any County Clerk. Said paper shall be water-marked with a design furnished by the Secretary of State, in such manner that the said water-mark shall be plainly discernible on the outside of such ballot when properly folded. Such design shall be changed for each general election, and the same design shall not be used again at any general election within the space of eight years, but at any special or separate local election paper marked with the design used at any previous election may be used.

Ballots, How Made—What to Contain—Questions Other Than the Election of Officers.

1704. SEC. 12. On each ballot a perforated line shall extend from top to bottom, one-half inch from the right hand side of such ballot, and upon the half-inch strip thus formed there shall be no writing or printing, except the number of the ballot, which shall be upon the back of the strip in such position that it

shall appear on the outside when the ballot is folded. The number on each ballot shall be the same as that on the corresponding stub, and the ballots and stubs shall be numbered consecutively in each county. Where the names of candidates are printed in separate columns, the columns shall be separated by heavy rules, and on all ballots the names of candidates shall be separated by a rule extending to the extreme right of the column. All ballots shall contain the name of each and every candidate whose nomination for any office specified in the ballot has been certified to and filed according to the provisions of this Act, and no other name. The names of the candidates for each office shall be arranged under the designation of the office in alphabetical order, according to surname, except that the name of candidates for Presidential Electors shall be arranged in groups as presented in the several certificates of nomination, and the names of the candidates for President and Vice-President shall precede the proper groups of Presidential Electors; the political designation of each candidate shall be printed opposite his name. There shall be left at the end of the list of candidates for each office one blank space to be used when substituting names to fill vacancies. There shall be a margin at the right hand side of the names at least one-half inch wide, so that the voter may clearly indicate in the way hereinafter described the candidate or candidates for whom he wishes to vote. Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot in such manner as to enable the electors to vote upon the question in the manner hereinafter provided. There shall be printed on the ballots opposite the designation of each office such words as will aid the voter to indicate his choice of candidates, such as "vote for one," "vote for three," and the like.

Number of Ballots and How Bound.

1705. SEC. 13. All ballots when printed shall be bound in stub books of five, ten, twenty-five, fifty and one hundred ballots each. A record of the number of ballots printed for them shall be kept by the respective County Clerks. *As amended, Stats. 1899, 100.*

Number Per Registered Voter.

1706. SEC. 14. The County Clerks shall provide for each election precinct in the county at least two ballots for each voter registered therein, and not more than five ballots in excess thereof. *As amended, Stats. 1899, 100.*

Error in or Omission of Name.

1707. SEC. 15. Whenever it shall appear, by affidavit, that an error or omission has occurred in the publication of the name or description of any of the candidates nominated, or in the printing of the ballots, any member of the Board of County Commissioners, upon application by any voter, shall issue an order requiring the County Clerk to correct such error.

New Election May Be Held.

1708. SEC. 16. Before the opening of the polls, at any election, the County Clerk shall cause to be delivered to the Board of Election of each election precinct in his county the proper number of tickets of the kind to be used in the election precinct. In case of prevention of an election in any precinct by reason of the loss or destruction of the ballots intended for that precinct, or for any other cause, the Inspector or other election officer for the precinct shall make an affidavit setting forth the fact and transmit it to the Governor of the state. Upon receipt of such affidavit, and upon the application of any candidate for any office to be voted for by the voters of such precinct, the Governor shall order a new election in such precinct.

McMillan v. Sadler, 25 Nev.

How Ballots to Be Furnished to Voters.

1709. SEC. 17. At the same time and in the same manner as Inspectors and Judges of Election are now appointed in the state, there shall be appointed two

Clerks of Election, who shall have charge of the ballots on election day, and shall furnish them to the voters in the manner hereinafter provided for. Said Clerks of Election shall possess the same qualifications, and receive the same compensation as Inspectors of Election. Said Clerks shall be selected from the political parties which polled the largest and the next largest votes in the precinct at the last preceding general election.

Booths, How Provided.

1710. SEC. 18. The Board of County Commissioners shall provide, at each polling place within the county, a sufficient number of places, booths or compartments, in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so placed that only such persons as are inside said rail can approach within six feet of the ballot box, and of such booths or compartments. The arrangements shall be such that neither the ballot box nor the booths or compartments shall be hidden from the view of those just outside the guard rail. The number of such booths or compartments shall be not less than one for each fifty or fraction of fifty voters registered in the precinct. Each of said booths or compartments shall be kept provided with proper supplies and conveniences for marking ballots. No person, other than voters engaged in receiving, preparing or depositing their ballots, shall be permitted inside said guard rail during the time the polls are open, except by authority of the Board of Election, and in that case only for the purpose of keeping order and enforcing the law.

How Elector Shall Vote.

1711. SEC. 19. Any person desiring to vote shall give his name and address to one of the Clerks of Election, who shall announce the same, and if the other Clerk shall find the name upon the registry list he shall repeat the name and address. One ballot shall then be given to the voter, and the number of the said ballot shall be written by one of the Clerks of Election upon the registry list opposite the name of the voter receiving it.

Preparation and Deposit of Ballot.

1712. SEC. 20. On receiving his ballot the voter shall immediately retire alone to one of the places, booths or compartments. He shall prepare his ballot by marking a cross or X after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters, the cross or X shall be placed after the answer which he desires to give. Such marking shall be done only with a black lead pencil. Before leaving the booth or compartment the voter shall fold his ballot in such manner that the water-mark and the number of the ballot shall appear on the outside, without exposing the marks upon the ballot, and shall keep it so folded until he has voted. Having folded his ballot, the voter shall deliver it to the Inspector, who shall announce the name of the voter and the number of his ballot. The Clerk having the registry list in his charge, if he finds the number to agree with the number of the ballot delivered to the voter, shall repeat the name and number, and shall mark opposite the name the word "voted." The Inspector shall then separate the strip bearing the number from the ballot, and shall deposit the ballot in the ballot box. Said strip and number shall be immediately destroyed.

Occupation of Booth.

1713. SEC. 21. But one person shall occupy any one booth or compartment at one time, and no person shall remain in a booth or compartment longer than may be necessary to prepare his ballot, and in no case longer than ten minutes. *As amended, Stats. 1893, 114.*

Spilled Ballots, How Treated.

1714. SEC. 22. Any voter who shall accidentally spoil a ballot may return

such spoiled ballot to the Clerks of Election, and receive another one in its place. All the ballots thus returned shall be immediately canceled, by writing the word canceled across the face of the ballot, and, with those not distributed to the voters, shall be returned with the election returns. A voter who does not vote the ballot delivered to him shall, before leaving the space inside the guard rail, return such ballot to the Clerks, who shall immediately cancel the same and return it in the same manner as a spoiled ballot. The Clerks of Election shall account for the ballots delivered to them, by returning a sufficient number of unused and spoiled ballots to make up, when added to the number of official ballots cast, the number of ballots delivered to them.

Physical Disability—Assistance.

1715. SEC. 23. A voter who declares under oath that, by reason of physical disability, he is unable to mark his ballot, shall at his request be permitted to receive the assistance, in such marking, of an elector, other than any election officer, but no person shall be permitted to go inside the guard rail as an assistant to more than one voter.

Ballot Not Deposited, When.

1716. SEC. 24. No ballot shall be deposited in the ballot box unless the water-mark, as hereinbefore provided, appears thereon, and unless the slip containing the number of the ballot has been removed therefrom by the Inspector.

Sample Ballots—Instructions to Voters.

1717. SEC. 25. The County Clerk shall cause to be printed on plain white paper, without water-mark or endorsement, except the words "sample ballot," at least as many copies of the form of ballot provided for use in each precinct as there shall be registered voters in any election precinct. And said County Clerk shall furnish to each Board of Election, as many sample ballots as there shall be registered voters in said precinct, and on election day, the Board of Election shall furnish each voter on application one such sample ballot. Said County Clerk shall also cause to be printed in plain type on cards, instructions for the guidance of voters for obtaining and marking their ballots. He shall furnish twelve such cards to the Board of Elections of each election precinct in the county, at the time and in the manner that ballots and sample ballots are furnished. The Board of Election shall post at least one of such cards in each booth provided for the preparation of ballots, and not less than three of such cards at other public places in and about the polling places on the day of election. There shall be printed on such cards sections twenty-seven, twenty-eight, twenty-nine and thirty of this Act. *As amended, Stats. 1899, 100.*

Irregular Ballots Thrown Out.

1718. SEC. 26. In counting the votes any ballot not bearing the water-mark, as provided in this Act, shall not be counted, but such ballot must be preserved and returned with the other ballots. When a voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office, his vote for such office shall not be counted. Any ballot upon which appears names, words or marks written or printed, except as in this Act provided, shall not be counted.

DISTINGUISHING MARKS—WHAT ARE AND WHAT ARE NOT—EXAMPLES OF—RESPONSIBILITY OF VOTER. Discussed at length. *Sweeney v. Hjul*, 23 Nev. 409; *Lynip v. Buckner*, 22 Nev. 426; *McMillan v. Sadler*, 25 Nev.

False or Fraudulent Certificate of Nomination, etc.—False Oath—Penalty.

1719. SEC. 27. Any person who shall falsely make or fraudulently deface or destroy any certificate of nomination or any part thereof, or file any certificate of nomination knowing the same or any part thereof to be false, or suppress any certificate of nomination which has been duly filed, or any part thereof, or make use of, keep or furnish to others, except as in this Act provided, any paper water-

marked in imitation of ballot paper, or disclose to any person not engaged in the making, printing or distribution of ballots or ballot paper under the direction of the proper officer, the design of the water-mark to be placed on the ballot paper, or print or be concerned in printing or have in his possession any imitation of an official ballot, or make any mark or indorsement on any ballot, or stub, by which the ballot can be distinguished from other ballots, or falsely swear that he is unable to mark his ballot by reason of physical disability, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a term not less than one year and not more than five years.

Destruction of Supplies.

1720. SEC. 28. Any person who shall, during an election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments, or shall, during an election, remove, tear down, or deface the cards of instruction posted, as prescribed by this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

Neglect of Duty—Penalty.

1721. SEC. 29. Any public officer, upon whom any duty is imposed by this Act, who shall willfully neglect or refuse to perform any such duty, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for a term not less than one year and not exceeding five years.

Interdictions Under Penalty.

1722. SEC. 30. No person except a member of the Board of Election shall receive from any voter a ballot prepared by such voter. No person shall examine such ballot or solicit a voter to show the same. No person shall remove any ballot from any polling place before the closing of the polls. No person shall apply for or receive a ballot at any election precinct other than the one on which he is entitled to vote. No person shall show his ballot to any person, after marking it, so as to reveal any of the names voted for. No person shall ask another within one hundred feet of the polling place for whom he intends to vote. No voter shall receive a ballot from any other person than one of the Clerks of Election, nor shall any other person than a Clerk of Election deliver such ballot to such voter. No voter shall deliver to the Board of Election or to any member thereof any ballot other than the one received from a Clerk of Election. No voter shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars and not exceeding five hundred dollars, or by imprisonment in the county jail for a term not less than one month and not exceeding six months.

An Act prescribing what shall constitute actual residence within the meaning of article two of the Constitution of the State of Nevada.

Approved March 4, 1889, 61.

Permanent Habitation.

1723. SECTION 1. The legal residence of a person, with reference to his right of suffrage and eligibility to office, is that place where his habitation is fixed and permanent, and to which, whenever he is absent, he has the intention of returning.

Residence Gained or Lost.

1724. SEC. 2. No person shall be deemed to have gained or lost such a residence by reason of his presence or absence while employed in the military, naval or civil service of the United States, or of the State of Nevada; nor while engaged in the navigation of the waters of the United States, or of the high seas; nor

while a student at any seminary, or other institution of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison or jail.

Residence Not Lost.

1725. SEC. 3. A person removing from one county, within this state, to another, or from one precinct to another of the same county, within thirty days prior to any election, shall not be deemed to have lost his residence in the county or precinct removed from; *provided*, he was an elector in such county or precinct on the thirtieth day prior to such election.

Residence Lost.

1726. SEC. 4. If a person remove to another state, territory or foreign country, with the intention of establishing his domicile there, and making it his home, he shall lose his residence in this state.

Burden of Proof.

1727. SEC. 5. If a person having a fixed and permanent home in this state, break up such home and remove to another state, territory or foreign country, the intent to abandon his residence in this state shall be presumed, and the burden shall be upon him to prove the contrary; and the same rule shall obtain when a person, in like circumstances, and in like manner, shall remove from one county or precinct to another within the state.

Residence of Family Place of Residence.

1728. SEC. 6. If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

Shall Lose Residence.

1729. SEC. 7. If a person remove to another state, territory or foreign country, with the intention of remaining there for an indefinite time, and as a place of present residence, he shall lose his residence in this state, notwithstanding that he may entertain the intention of returning at some uncertain future period; and an occasional return, either for business purposes or pleasure, to the place of his former abode, in this state, shall not be sufficient to preserve his residence therein.

An Act to provide for the transmission of ballots, poll books and tally lists by mail in certain cases.

Approved March 6, 1889, 67.

Inspectors Shall Post Bulletin.

1730. SECTION 1. At every election hereafter to be held in this state, in precincts which are, by the usually traveled route, more than fifty miles distant from the county seat, and wherein less than fifty voters shall be registered for that election, the Inspectors shall, before they adjourn, post conspicuously at the polling place, a bulletin, signed by each of them, stating the number of ballots cast for each candidate and for and against each question which has been voted upon.

Seal and Transmit Ballots.

1731. SEC. 2. They shall also, before they adjourn, seal the ballots in a strong envelope, writing across the back thereof the words "Ballots (here give the name) Precinct," and also sign the names thereon. They shall then place the envelope containing the ballots, together with one of the tally lists and one of the poll books, in a sealed package, the weight of which, including the wrapper or box, must be less than the limit of weight allowed to be transmitted by mail. They shall then address the same to the proper officer at the county seat, stating

in writing on the outside of the package the contents thereof, and deliver it to one of their number, to be chosen by lot, who shall immediately, without opening it or permitting it to be opened, deliver it to the nearest Postmaster and pay the postage thereon, and have the package registered.

Inspector, How Paid.

1732. SEC. 3. The Inspector who delivers the package shall be paid the amount expended by him in paying the postage on the package, and fifteen cents per mile for going to and fifteen cents per mile for returning from the postoffice, in the same manner and out of the same fund as other election expenses are paid; *provided*, that no such mileage shall be paid unless the total distance necessarily traveled in going and returning be greater than two miles.

Returns to Be Kept in Sealed Package.

1733. SEC. 4. In cases where this Act shall apply the ballots shall, after they reach the county seat, be kept in sealed packages by the proper officer, instead of in the ballot boxes.

Ballot Box to Remain in Custody of Inspectors.

1734. SEC. 5. In precincts where this Act shall apply, the ballot box may remain in the custody of the Inspectors until the next election, when it shall be turned over to the Inspectors of said election, and in such cases the tally lists, poll books and other books and papers may be sent in sealed packages by registered mail to one of the Inspectors.

An Act providing for the closing of polls at elections in certain cases.

Approved March 6, 1889, 66.

Closing Polls.

1735. SECTION 1. Whenever at any election all the votes of the precinct, as shown by the registry list, shall have been cast, the Inspectors shall immediately close the polls and shall forthwith begin the counting of the ballots, and continue the same without unnecessary delay until the count is completed.

An Act relating to elections.

Approved March 6, 1889, 73.

Dividing Voting Places.

1736. SECTION 1. The several Boards of County Commissioners in the counties of this state in providing for and proclaiming election precincts shall so arrange and divide the voting places in their respective counties so that no greater number than four hundred voters shall vote in one precinct; *provided*, that where there are registered over four hundred and less than four hundred and eighty, then one polling place shall be sufficient for said precinct.

An Act to provide for taking the votes of electors of the State of Nevada, who may be in the military service of the United States.

Approved March 14, 1899, 108.

Adjutant-General to Certify to Secretary of State.

1737. SECTION 1. For the purpose of taking the vote of the electors of this state, who may be in the service of the United States Volunteers, and at the time beyond the territorial limits of the state, the Adjutant-General of the state shall, in due time to carry out the provisions of this Act, make and deliver to the Secretary of State duly certified separate lists for each county, having soldiers in the service, of the names of all qualified electors under the laws of this state, at the time of their enlistment, who may be in the military service of the United States, classified and arranged in alphabetical order, showing the regiment, battalion,

squadron, battery and company, or other division to which each elector belongs, also the county and precinct in which he is entitled to vote.

Certified Copies to Be Transmitted to Commanding Officer.

1738. SEC. 2. The Secretary of State shall immediately transmit duly certified copies of such proper lists to the commanding officer of each of said organizations of which electors may be members.

Manner of Taking Votes of Volunteers.

1739. SEC. 3. Between the hours of eight o'clock a. m. and six o'clock p. m. on the day of election, a ballot box, or other suitable receptacle, shall be opened under the immediate charge and supervision of the three officers highest in command, for the reception of votes from the electors whose names are upon said lists, at each place where a regiment, battalion, squadron, battery, company or other division of soldiers from this state in the military service of the United States may be on that day, at which time and place said electors shall be entitled to vote for all officers, for which by reason of their residence in the several counties of this state, they are entitled to vote, as fully as they would be entitled to vote if present in the respective counties and precincts of their residence; and the votes so given by such electors, at such time and place, shall be considered taken, held, canvassed and counted by the respective Canvassing Boards of Election in this state as if they had been given by them in the respective counties and precincts in and of which they were qualified electors at the time of their enlistment.

Ballot to Be Official—Board of Officers to Count the Votes—Form of Certificate.

1740. SEC. 4. The ballot to be cast by such electors shall be the official ballot provided by law. The name of each elector voting as aforesaid shall be checked at the time of voting, by one of said officers in charge of the ballot box, upon said list. The said officers having charge of the said election shall proceed to count the votes and compare the numbers with the checked lists immediately after the close of the polls, and on completing the count the said officers shall make and sign a return or certificate of the result, in substance as follows, to wit:

Return of soldiers' vote in the (here insert the regiment or other command as the case may be). We, the undersigned (here insert rank and command), do hereby certify that on the ____ day of _____, the electors belonging to our said command cast the following number of votes for the several persons and the officers herein named, to wit:

For Governor (here name each person voted for for Governor, to the number of votes each received, written in full, also in figures, against and following the name of each person). For Lieutenant-Governor (here insert names of all voted for, number of votes for each, written in full, also in figures, against and following the name of such person), and so continue until the list is completed. Witness our hands this ____ day of _____.

A. B. (with rank and command).

C. D. (same).

E. F. (same).

Transmission and Receipt of Returns—Canvassing Of.

1741. SEC. 5. All the ballots cast, together with the said voting lists, checked as aforesaid, and said return, shall be immediately sealed up and sent forthwith by the commanding officer to the Secretary of State at the seat of government, on receipt of which the Secretary of State shall, in the presence of the Chief Justice of the Supreme Court, open said returns and immediately certify to the Board of County Commissioners of the proper county the soldier vote of such county for the various officers as returned to him, and such Board of County Commissioners shall canvass and count such vote, as soon as practicable after receiving the same.

State and District Officers.

1742. SEC. 6. For state and district officers the said returns shall be canvassed by the State Board of Canvassers.

Secretary of State to Furnish Necessary Ballots, etc.

1743. The Secretary of State is hereby required to furnish, prepare and have printed the necessary ballots, and if he is not in possession of the names of the candidates for county and township officers, said names may be omitted from the ballot. He shall also furnish each commanding officer the necessary check and poll lists, together with the proper and sufficient blanks for said returns and all necessary instructions for the taking of the votes in their respective commands.

An Act to secure the election of United States Senator in accordance with the will of the people and the choice of the electors of the state, and to obtain an expression of such choice, and to prevent fraud and official dereliction of duty in connection with such election.

Approved March 14, 1899, 86.

Nominated in Same Manner as State Officers.

1744. SECTION 1. At the general elections next preceding the expiration of the time for which any United States Senator was elected or appointed to represent the State of Nevada in Congress, candidates for choice of the electors of this state for United States Senator may be nominated in the same manner as now provided for the nomination of state officers, and either by certificate of nomination by a party convention or by certificate of nomination signed by electors equal to ten per cent of the entire vote cast at the preceding election.

Certificate of Nomination Filed With the Secretary of State—Ballot, How Prepared.

1745. SEC. 2. Such certificates of nomination shall be filed, with the Secretary of State, who shall certify the names of all candidates as shown therein to the various County Clerks as now required by law in case of candidates for state offices, and the several County Clerks in preparing the ballots to be voted at any such general election shall place thereon the names of all such candidates under the words "Choice for United States Senator, vote for one," and there shall be a margin at the right hand side of these names, at least one-half inch wide, where the voter may indicate his choice of said candidates by making a cross or X.

Candidates to Be Submitted at General Election—Secretary of State to Transmit Result of Official Canvass to the Legislature.

1746. SEC. 3. The names of all candidates so nominated shall be submitted to the electors of the state for them to express their choice at every such general election, and the vote upon such choice shall be taken, returned, canvassed and certified by the same authority and in the same way as the vote for state officers is taken, canvassed, returned and certified, and in manner and form complying with the requirements and provisions of an Act relating to elections and to more fully secure the secrecy of the ballot, approved March 13, 1891, and of the various Acts amendatory thereof and supplementary thereto, and the Secretary of State shall, within five days after the convening of the next session of the legislature following any such election, transmit to each branch thereof the result of the official canvass of the vote upon said choice and candidates.

Not to Apply to Vacancies, When.

1747. SEC. 4. The provisions of this Act shall not apply to the filling of any vacancy in the office of United States Senator which may occur by death, resignation or removal between the date sixty days prior to any general election and the adjournment of the next session of the legislature.

No Reward Used in Aid of Candidate.

1748. SEC. 5. No person shall, either in aid of his own candidacy or election, or in aid of the candidacy or election of any other person for the choice of the electors for United States Senator, give, pay, expend or promise any money or reward to any one whomsoever.

An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada.

Approved March 5, 1887, 122.

Board of Examiners Shall Order Amendments Printed.

1749. SECTION 1. Whenever the conditions prescribed by the Constitution of the State of Nevada for amending the same have been complied with by the legislature, the State Board of Examiners shall order such proposed amendments to the constitution published in one daily newspaper of general circulation, published in the State of Nevada, for a period of ninety days next preceding any general election held in this state, when any proposed amendments are pending.

Publisher Shall Print and Mail Copies of Paper.

1750. SEC. 2. The publisher of the newspaper publishing the proposed amendments, as required by this Act, shall print and send to the County Clerk of each county in this state, as many copies of said newspapers containing the publication of said proposed amendments as there were registered voters for the general election of eighteen hundred and eighty-six, and the printing and mailing of said extra copies required under this Act shall be done by the publisher without expense to the state. It is hereby made the duty of the Clerk of each county to mail to every registered voter within his county a copy of the newspaper containing the proposed amendments.

Commissioners' Proclamation.

1751. SEC. 3. The several Boards of County Commissioners in this state, before the next general election after final agreement by the legislature to any proposed amendments to the constitution, shall, in their proclamation, order that there be printed on the ballots: "Amendment No., Yes"; or "Amendment No., No."

Canvass and Return.

1752. SEC. 4. The vote on an amendment to the constitution shall be canvassed and returned in the same manner as is or may be provided by law for the canvass and return of votes for elective officers.

An Act concerning the election of town and city officers in this state and matters properly connected therewith.

Approved March 22, 1897, 113.

Duties of Registry Agents.

1753. SECTION 1. The Registry Agents of every voting precinct in this state, containing within its limits a town or city, the boundaries of which are described by metes and bounds, shall register all voters, residents of said town or city, separately from the voters who reside within the said voting precinct but without the limits of said town or city, or he shall designate after the name of each voter whether he is a resident within or without said town or city; *provided* that when there are no officers to be elected exclusively for said town or city such separate registration shall not be required.

Shall Designate Residence.

1754. SEC. 2. The Registry Agents, in preparing the official register for any voting precinct as described in section one of this Act for the use of election officers, of the precinct and the wards thereof, if any there be, shall designate after the name of each voter, or in some other appropriate and intelligible manner, the residence of the voter, whether within or without the limits of the town or city, so that the election officers can readily determine whether or not voters are qualified to vote for town or city officers, if any such are to be elected.

Ballots to Contain--Proviso.

1755. SEC. 3. The County Clerk shall cause to be placed upon the official

ballots to be used at any voting precinct containing within its limits a town or city, as described in section one of this Act, the names of all candidates for office for said town or city, in manner as now provided by law to be voted for exclusively by the electors of said town or city; *provided*, that he shall furnish sufficient ballots without the names of candidates for town or city officers, for use of the voters of the precinct who reside without the limits of said town or city, and the number of all ballots furnished for use in said precincts, and the wards thereof, if any there be, shall be as now provided by law, and shall be apportioned according to the relative number of each class of voters as herein designated.

Form of Ballot.

1756. SEC. 4. The election officers of every voting precinct and the wards thereof, if any there be, shall, in manner as now provided by law, furnish the voters of said precinct or the wards thereof, with ballots with or without the names of the candidates for town, or city officers, according as the voter is a resident within or without the limits of said town or city as shown by the official registry list for use of the election officers of said precincts, or the wards thereof, as in this Act provided, and no ballot containing names of candidates to be voted for exclusively by residents of the town or city shall be given to any voter who resides without the limits of said town or city.

Manner of Voting.

1757. SEC. 5. Except as herein specially provided, the manner of voting and conducting the election shall be as now provided by law.

Applicable to Wards.

1758. SEC. 6. Whenever any officer or officers of any town or city as herein mentioned are to be voted for exclusively by the qualified voters of any ward or wards of said town or city, then all of the provisions of this Act concerning the registration and manner of voting for town or city officers shall apply to said ward or wards.

An Act to define the manner of electing County Commissioners.

Approved February 21, 1893, 33.

Commissioner Districts.

1759. SECTION 1. Whenever twenty per cent or more of the qualified electors of any county in this state shall petition the Board of County Commissioners of their county to that effect, it shall be the duty of the County Commissioners of such county, on or before the first Monday in July preceding any general election, to divide the county into three districts to be known as "Commissioner Districts." Such division shall be made to conform to the established boundaries of election precincts or wards, and each and every election precinct or ward shall be wholly within one of the commissioner districts herein provided for. Each commissioner district shall embrace, as near as may be, one-third of the voting population of the county, to be determined by the vote cast at the last general election, and shall consist of adjoining precincts; *provided*, that in case not more than three election precincts or wards exist in the county, then each election precinct or ward shall constitute a commissioner district.

Precincts in Commissioner Districts to Be Designated.

1760. SEC. 2. It shall be the duty of the Board of County Commissioners to cause to be published in some newspaper in the county, if there be one, and if not, then by the posting at the door of the court house, and one or more conspicuous places in each of the commissioner districts, a notice specifying the election precincts or wards embraced in each of the commissioner districts so established. Such notice shall be posted or published for a period not less than twenty days prior to each general election.

Terms of Office.

1761. SEC. 3. The Commissioner designated in the statute as the "long term" Commissioner shall represent the district in which he resided when elected, and at the general election in the year eighteen hundred and ninety-four, and every two years thereafter, there shall be elected a Commissioner from each of the remaining districts, one for the "long term" and one for the "short term," as now provided by law.

Elected Same as Other Officers.

1762. SEC. 4. County Commissioners shall be elected by the qualified electors of the county wherein they reside as other county officers are now elected. *As amended, Stats. 1895, 39.*

An Act to provide for the election of School Trustees and matters properly connected therewith.

Approved March 16, 1897, 100.

School Trustees, When Elected.

1763. SECTION 1. An election of School Trustees shall be held in each school district in the state on the fourth Monday in May, 1898, and every two years thereafter, and at such elections two Trustees shall be elected, one to serve two years and one to serve four years. The Trustees so elected shall take their office on the first Monday in July next succeeding their election.

Vacancies.

1764. SEC. 2. In all cases where Trustees are not elected as provided in this Act or whenever vacancies occur, the Superintendent of Public Schools shall fill such vacancies by appointment.

Election Officers Appointed.

1765. SEC. 3. All Judges and Inspectors of Election and such other officers as may be necessary, shall be appointed by the School Trustees in each district. If the Trustees fail to appoint the election officers or if they are not present at the time of opening the polls, the electors present may appoint them. All such officers shall serve without compensation.

Certificates of Election.

1766. SEC. 4. The Election Board shall issue certificates of election to those receiving the greatest number of votes cast in accordance with the provisions of this Act.

Notices Posted.

1767. SEC. 5. Not less than ten days before the election held under the provisions of this Act, the Trustees in each district shall post notices in three public places in the district, which notices shall specify that there will be an election held at the school house of such district and the hours between which the polls will be kept open. If the Trustees of any district shall have failed to post the notices as required by this section, then any three electors of the district may, within five days of the day of election, give notice of such election, which notices shall be sufficient for the election required by this Act, and in such case no registration shall be necessary, but all the other provisions of this Act shall be enforced.

Qualification for Voting.

1768. SEC. 6. No person shall be allowed to vote at any school election unless he is a resident of the district and his name appears upon the official registry list of the voting precinct or precincts including the district, for the last preceding general election; *provided*, that any citizen of the United States who shall have resided in this state six months, and in the school district thirty days next preceding the day of election and whose name is not upon the said official registry list, may apply to the Clerk of the Board of School Trustees, or to a per-

son authorized by the Trustees of the district to act as Registry Agent, not more than eight nor less than five days prior to the day of election, to have his name registered.

Registration—Form of Oath.

1769. SEC. 7. It shall be the duty of the Clerk of the Board of School Trustees, or the person appointed by the Board of School Trustees, as the case may be, to register any qualified voter of the school district who may apply to be registered under the provisions of the preceding section; *provided*, that if the person applying to be registered be unknown to the Registry Agent, or his qualifications for voting be unknown, he shall, before having his name registered, be required to subscribe to the following oath: "You do solemnly swear that you are a citizen of the United States; that you are twenty-one years of age; that you will have resided in the state six months and in this school district thirty days next preceding the day of the school election." False swearing under the provisions of this section shall be deemed perjury, and punished as now provided by law.

List of Voters.

1770. SEC. 8. No person shall be entitled to vote under the provisions of this Act except he be registered as herein provided. The Board of School Trustees shall prepare or cause to be prepared a list of the names of all persons entitled to vote at the school election as herein provided, which said list shall be completed at least three days prior to the day of election and shall be under the charge of the Clerk of the Board of School Trustees and subject to the inspection of any qualified voter in the district.

List of Voters—Compensation Allowed.

1771. SEC. 9. The Board of School Trustees in all school districts having a voting population of fifty or more, are authorized to employ a competent person to prepare said list of qualified voters and to pay for the work out of the school fund of the district, in [a] manner as other claims against the district are allowed and paid, a reasonable sum, not exceeding five cents a name for each qualified voter, providing that the total amount to be allowed shall not exceed twenty dollars. The list so prepared shall be sworn to by the person making the same as correct according to his best knowledge, information and belief.

List Delivered to Inspectors of Election.

1772. SEC. 10. The list of qualified voters, as hereinbefore described, shall be delivered to the Inspectors of Election prior to the time of opening the polls on the day of election, and no person shall be entitled to vote at the election whose name is not on said list, *provided*, that any person whose name is left off said list by mistake, design, accident or otherwise, may have his name placed thereon by the Inspectors of Election upon satisfactory proofs being presented of his having previously been registered in accordance with the provisions of this Act.

Voting Shall Be by Ballot.

1773. SEC. 11. The voting shall be by ballot, either written or printed and when two or more Trustees are to be elected for different terms, the ballot shall designate such term as "long term" and "short term" respectively.

Ballots, What to Contain—Number of Ballots.

1774. SEC. 12. In all school districts having a voting population of one hundred or over, the Board of School Trustees shall have printed ballots of uniform size containing the names, in alphabetical order, of all persons candidates for the office of School Trustee. There shall be twice as many ballots printed as there are voters in the district, and no ballots other than those furnished by the Board of School Trustees shall be voted.

How to Vote.

1775. SEC. 13. A person desiring to vote shall, if his name be upon the reg-

istry list as herein provided, receive from the Board of Election or some member thereof, and from no other person, a ballot upon which he shall designate his choice for Trustee or Trustees to be elected in the district, by placing a cross thus: X, opposite and to the right of the name of the person for whom he intends to vote.

Ballot Can Contain.

1776. SEC. 14. There shall be placed upon the ballots, in addition to the names of the candidates such information as the Board of Trustees may deem necessary to inform the voter how to mark his ballot, such as: "Place a cross thus: X, opposite and to the right of the name of the candidate for whom you wish to vote," "vote for one," "vote for two," etc.

Who Allowed at Polls—Misdemeanor for Violation.

1777. SEC. 15. No person other than the Board of Election or a police officer in the discharge of his duty, shall be allowed within one hundred feet of the polls, except when actually engaged in voting or in going to or from the polls for the purpose of voting or of challenging the vote of another, and excepting all persons in attendance upon any school which may be in session in the building. No person shall show his ballot to another while marking it or after marking it so as to disclose for whom he has voted, but he shall as soon as possible after marking it fold it so that the marking will be on the inside and return it to the Board of Election to be counted. Willful violation of any of the provisions of this section shall constitute a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment in the county jail not exceeding twenty-five days, or by both such fine and imprisonment.

Assistance Allowed.

1778. SEC. 16. No person shall receive assistance in marking his ballot unless physically unable to mark it and then only by permission of the Board of Election. A voter spoiling his ballot may procure another by delivering the spoiled ballot to the Board of Election.

Challenges—Penalty for Illegal Voting.

1779. SEC. 17. Any registered person offering to vote may be challenged by any elector of the district, and the Judges of Election must thereupon administer to the person challenged an oath in substance as follows: "You do swear that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this state six months and in this school district thirty days next preceding this election, and that you have not voted before this day." If he takes the oath prescribed in this section his vote shall be received, otherwise his vote must be rejected. Illegally voting under the provisions of this Act shall be punished the same as the law now provides for punishing offenses of this character.

Candidates to File Their Names.

1780. SEC. 18. In school districts having a voting population of one hundred or over, candidates for the office of School Trustee shall, not later than five days before the day of election, have their names filed with the Clerk of the Board of School Trustees with the designation of the term of office for which they are candidates, and no names shall be placed upon the ballots unless filed within the time herein provided.

Duty of Election Board Upon Completion of Count.

1781. SEC. 19. The Board of Election shall keep a poll list and tally sheet, which, together with the registry list and all ballots cast, shall be delivered to the County Clerk upon the count being completed, and such returns shall be kept as the law now provides for keeping returns of general elections.

This Act supersedes Act of 1891, 93, and the Acts amendatory thereof.

OFFICERS GENERALLY.

An Act relating to officers, their qualifications, times of election, terms of office, official duties, resignations, removals, vacancies in office, and the mode of supplying the same, misconduct in office, and to enforce official duty.

Approved March 9, 1866, 231.

What Officers to Be Elected—Appointed Officers.

1782. SECTION 1. There shall be elected the following officers, to wit: First—A Governor and Lieutenant-Governor. Second—Two United States Senators. Third—As many Members of the House of Representatives of the United States as this state may be entitled to. Fourth—As many Presidential Electors as this state may be entitled to. Fifth—Three Justices of the Supreme Court. Sixth—One District Judge for each judicial district into which the state is divided by law. Seventh—Senators and Members of the Assembly. Eighth—A Secretary of State, State Treasurer, State Controller, Attorney-General, and Surveyor-General. Ninth—A Clerk of the Supreme Court. Tenth—A State Superintendent of Public Instruction. Eleventh—For each county, one County Clerk, who shall be ex officio Clerk of the Board of County Commissioners, and also Clerk of the district court of his county; one Sheriff; one District Attorney; one Public Administrator, who shall be ex officio Coroner; one Assessor; one Treasurer; one County Surveyor; one County School Superintendent; three County Commissioners, except in counties having a voting population of four thousand and upwards, and in those counties five; one County Recorder, who shall be ex officio County Auditor; Justices of the Peace; and Constables. The following officers shall be appointed, to wit: Notaries Public, Commissioners of Deeds, for the respective states and territories of the United States and foreign countries, and all the officers which are not elective.

QUALIFICATIONS OF OFFICERS.

Who Eligible.

1783. SEC. 2. No person who is not a qualified elector shall be eligible to any office of honor, profit, or trust, in and under the government and laws of this state. No person shall be eligible to the office of Governor, Lieutenant-Governor, Judge of the Supreme Court, Secretary of State, State Treasurer, State Controller, Attorney-General, Surveyor-General, Superintendent of Public Instruction, who, at the time of such election, has not attained the age of twenty-five years, and been a citizen resident of this state for two years next preceding the election; and to the offices of Clerk of the Supreme Court, State Senator, or Assemblyman, who, at the time of such election, has not attained the age of twenty-one years, and been a citizen resident of this state one year next preceding the election. Any person over the age of twenty-five years shall be eligible to the office of District Judge who is a qualified elector of the state and district in which he resides.

OF THE ELECTION OF PRESIDENTIAL ELECTORS AND THE TIME AND MANNER THEREOF.

Presidential Electors.

1784. SEC. 3. In each year when the election of President and Vice-President of the United States is to take place, there shall be chosen as many Electors of President and Vice-President as this state may be entitled to at the time of such election.

Time and Manner of Election.

1785. SEC. 4. The qualified voters of the state shall meet at the places designated for holding the general election in the different counties in the state, on the Tuesday next after the first Monday in November, in each year when the election of President and Vice-President is to take place, unless the Congress of the United

States shall appoint a different day, and in that case, on such day as Congress shall appoint, and shall proceed to elect as many persons as the state shall then be entitled to elect as Electors of President and Vice-President.

Notice of Election, How Given.

1786. SEC. 5. Notice of the election of Electors shall be given in the same manner as notice is required to be given of other elections, and the election thereof made in the same manner as is prescribed by law in regard to the election of Representatives in Congress.

Electors, When and Where to Convene.

1787. SEC. 6. The Electors so chosen shall convene at the seat of government on the first Wednesday in December next after their election, at two o'clock in the afternoon, and in case of the death or absence of any Elector so chosen, or in case the number of Electors shall, from any cause, be deficient, the Electors then present shall forthwith elect, from the qualified electors of the state, so many persons as shall supply the deficiency. *As amended, Stats. 1869, 64.*

Duties When Convened.

1788. SEC. 7. The Electors, when convened on said first Wednesday in December, shall vote by ballot for one person for President and one person for Vice-President of the United States, one of whom, at least, shall not be an inhabitant of this state. They shall name in their ballots the persons voted for as President, and in distinct ballots the persons voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes given for each, which list they shall sign and certify and transmit, sealed up, to the seat of government of the United States, directed to the President of the Senate; and they shall, in all respects, proceed conformably to the Constitution of the United States, and the laws of the United States in this behalf. *As amended, Stats. 1869, 64.*

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS, AND THE TIMES AND MANNER THEREOF.

Representatives in Congress.

1789. SEC. 8. At the general election in the year eighteen hundred and sixty-six, and at the general election in each second year thereafter, there shall be elected such number of Representatives to the Congress of the United States as the State of Nevada may be entitled to.

OF TIMES OF ELECTION AND TERMS OF STATE AND COUNTY OFFICERS, EXCEPT PRECINCT OFFICERS.

State and County Officers.

1790. SEC. 9. The Governor, Lieutenant-Governor, Secretary of State, Justices of the Supreme Court, State Treasurer, State Controller, Attorney-General, Surveyor-General, Clerk of the Supreme Court, and State Superintendent of Public Instruction, shall be elected by the qualified electors of the state; Members of the House of Representatives of the United States, District Judges, District Attorneys, Senators, Members of the Assembly, County Commissioners, County School Superintendents, Sheriffs, County Clerks, Public Administrators, Recorders, Assessors, County Treasurers, and County Surveyors, shall be elected by the qualified electors of their respective districts or counties. Justices of the Peace and Constables shall be elected by the qualified electors of their respective precincts or townships.

State Officers, When Chosen—Term of Office.

1791. SEC. 10. The Governor, Lieutenant-Governor, Secretary of the State, State Controller, State Treasurer, Attorney-General, and Surveyor-General shall be chosen at the general election of the year eighteen hundred and sixty-six, and every fourth year thereafter, and shall hold their office for the term of four years

from the time of their installment, and until their successors shall be qualified, and all of said officers, excepting the Surveyor-General, shall keep their office and reside at the seat of government.

Justices of Supreme Court, When Chosen.

1792. SEC. 11. One Justice of the Supreme Court shall be chosen by the qualified electors of the state, at the general election of the year eighteen hundred and sixty-six, and one every second year thereafter, and shall hold his office for the term of six years from the first Tuesday after the first Monday in January next after his election. Each Justice hereafter elected or appointed shall be commissioned by the Governor, and before entering upon the discharge of his duties shall take the constitutional oath of office. The senior Justice in commission shall be Chief Justice and in case the commission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

Clerk of Supreme Court.

1793. SEC. 12. At the general election in the year eighteen hundred and sixty-six, and at the general election every four years thereafter, the Clerk of the Supreme Court shall be chosen by the qualified electors of the state, and shall hold his office for the term of four years from the first Tuesday after the first Monday in January next after his election, and until his successor is qualified.

Superintendent of Public Instruction.

1794. SEC. 13. At the general election in the year eighteen hundred and sixty-six, and at the general election every four years thereafter, the State Superintendent of Public Instruction shall be chosen by the qualified electors of the state, and shall hold his office for the term of four years from the first Monday of January next after the election, and until his successor is qualified.

District Judges.

1795. SEC. 14. District Judges shall be chosen by the qualified electors of their respective districts, at the general election of the year eighteen hundred and sixty-six, and shall hold their offices for the term of four years from the first Monday of January next after their election.

Assemblymen.

1796. SEC. 15. The Members of the Assembly shall be chosen by the qualified electors of their respective districts, at the general election of the year eighteen hundred and sixty-six, and shall hold their office for the term of two years from the day succeeding such election.

Senators.

1797. SEC. 16. The Senators shall be elected by the electors of their respective districts, at the general election in the year eighteen hundred and sixty-six, and every two years thereafter, and shall hold their offices for four years from the day succeeding such general election.

County Officers.

1798. SEC. 17. County Clerks, Sheriffs, County Assessors, County Treasurers, District Attorneys, County Surveyors, County Recorders, County School Superintendents, County Commissioners, and Public Administrators, shall be chosen by the electors of their respective counties, at the general election in the year eighteen hundred and sixty-six, and at the general election every two years thereafter, and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election.

ELECTION OF JUSTICES OF THE PEACE AND CONSTABLES.

Township Officers.

1799. SEC. 18. The Board of County Commissioners of each county shall,

from time to time, as the public good may require, divide said county into a convenient number of townships, and shall cause such division to be published. For each of such townships one Justice of the Peace shall be elected. The Constables of the several townships of the state shall be chosen at the general election of the year eighteen hundred and sixty-six, and shall enter upon the duties of their offices on the first Monday of January next succeeding their election, and shall hold their offices for the term of two years thereafter, until their successors are elected and qualified. Justices of the Peace of the several townships of the state shall be chosen at a general election, to be held for that purpose, on the Tuesday after the first Monday in November, in the year eighteen hundred and sixty-six, who shall hold their offices from the expiration of the term of the present incumbents until the first Monday of January, A. D. eighteen hundred and sixty-nine, and until their successors are elected and qualified.

New Township.

1800. SEC. 19. When any Justice of the Peace, in the formation of a new township, shall be brought within the limits thereof, he shall be one of the Justices of the Peace allowed to such new township, and shall continue in office until the expiration of the term for which he was elected.

Justice of the Peace in Certain Townships.

1801. SEC. 20. If, by annexing a part of one township to another, there should be more than the proper number of Justices within the limits of the townships to which such addition shall have been made, any Justice of the Peace brought within such township shall, notwithstanding, hold and exercise his office therein until the expiration of his term of office, but no successor shall be elected to fill any vacancy in said office which may be occasioned by the expiration of said term, or otherwise. And whenever any township, in consequence of a part being taken to form a new township, or to be annexed to any other township, shall be deprived of its proper number of Justices of the Peace, the vacancy thus produced shall be supplied, as in other cases.

New Township—Constable.

1802. SEC. 21. When any Constable, by the formation of a new township, shall be brought within the limits thereof, he shall continue to act as Constable to such new township, and shall continue in office until the expiration of the term for which he was elected.

OATH AND BOND OF OFFICE.

Oath and Bond.

1803. SEC. 22. Members of the Legislature, and all officers, executive, judicial and ministerial, shall, before entering upon the duties of their respective offices, provide the official bond required by law, when such bond shall be required, and take and subscribe to the official oath. All officers elected, except Senators and Representatives, shall qualify, and execute and deliver their official bonds (when required), as above provided, prior to the Tuesday after the first Monday in January ensuing their election; and all officers appointed to fill vacancies, in the cases provided by law, shall qualify and give bond (when required) within thirty days from the time of their appointment. The term of office of all officers, elected or appointed, shall begin from the time of their qualification, unless some other express provision is made by law.

Oath Indorsed on Commission.

1804. SEC. 23. Said oath, except in cases specified in the next two sections, shall be indorsed on the commission or certificate of election of such officer, and signed by him, and certified by the officer before whom such oath or affirmation shall have been taken.

Members of Legislature.

1805. SEC. 24. Members of the Legislature shall take and subscribe to the

official oath before they assume their seats as such members, and an entry thereof shall be made on the journal of the proper house.

Official Oaths of Governor and Lieutenant-Governor, When Subscribed.

1806. SEC. 25. The Governor and Lieutenant-Governor shall respectively take and subscribe to the official oath before the Chief Justice or one of the Associate Justices of the Supreme Court, on the first Monday of January next succeeding their election. *As amended, Stats. 1881, 22.*

Before Whom Oath Taken.

1807. SEC. 26. The oath shall be taken, and, except in the cases prescribed in the two next preceding sections, may be subscribed before any Judge of the supreme or district court or Clerk thereof, County Clerk, Notary Public, or Justice of the Peace, unless otherwise directed by law.

Oath Taken at the Time of Reception of Commission.

1808. SEC. 27. It shall be the duty of every officer, whose oath of office is required to be indorsed on his commission or certificate of election, to take and subscribe said oath at the time of the reception of said commission or certificate.

Deputies.

1809. SEC. 28. When any officer is authorized or required by law to appoint a deputy, such deputy, before he shall proceed to act, shall take the same oath as his principal.

COMMISSIONS AND CERTIFICATES OF ELECTION.

Commissions, How Issued.

1810. SEC. 29. All commissions of officers shall be in the name and by the authority of the State of Nevada, and shall be sealed with the great seal of the state, signed by the Governor, and countersigned by the Secretary of State.

Certificate of Election and Commissions.

1811. SEC. 30. Members of the Legislature and all county and precinct officers elected by the people, shall receive certificates of election from the Boards of County Commissioners of their respective counties, and all state officers shall receive their commissions from the Governor.

Election and Qualification Certified to Secretary of State—Vacancies Certified.

1812. SEC. 31. It shall be the duty of the Clerk of the Board of County Commissioners of each county in this state, within ten days after the election or appointment and qualification of any county officer (authorized by law to take acknowledgments or administer oaths), or Justice of the Peace, in their county, to certify, under seal, to the Secretary of State (stating the election or appointment and qualification of any such officer), which certificate shall be filed in the office of the Secretary of State as evidence of the official character of such officers. Said Clerk shall, also, within ten days after a vacancy has occurred in any county office, or office of Justice of the Peace (by resignation or otherwise), certify to the Secretary of State the fact of such vacancy. Each district officer, authorized by law to take acknowledgments or administer oaths, shall, within ten days after entering upon the discharge of the duties of his office, file a duplicate certificate of his official oath in the office of the Secretary of State, which certificate shall be evidence of the official character of such officer; and all resignations of any officer, required to be made to the Governor, shall be by him filed in the office of the Secretary of State.

Commission or Certificate.

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Commission or Certificate.

1813. SEC. 32. Any officer elected or appointed to fill any vacancy shall be commissioned, or receive a certificate of election or appointment to such office.

OF RESIGNATIONS.

Resignations and Vacancies.

1814. SEC. 33. Any person who shall receive a commission, or a certificate of his election or appointment, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties or taken the requisite oath of office; and when any vacancy shall occur in the office of member of the senate or assembly, by death, resignation, or otherwise, and a session of the legislature is to take place before the next general election, the Governor shall issue a writ of election, directed to the Board of County Commissioners of the county or district in which such vacancy shall occur, commanding such board to notify the several Inspectors in their county or district to hold a special election to fill such vacancy or vacancies, at a time appointed by the Governor.

Resignations, How Made.

1815. SEC. 34. Resignations of office shall be made as follows, to wit: First—The Governor and Lieutenant-Governor shall transmit their resignations to the legislature, if in session, and if not in session, then to the Secretary of State. Second—All state officers commissioned by the Governor or elected by the legislature (except the officers of that body), shall resign their commissions to the Governor. Third—Members of the Legislature, when they resign their seats, shall deliver their resignations to the Governor, and he shall immediately order an election to fill such vacancy. Fourth—By all county officers (except District Judges, and they to the Governor), to the Board of County Commissioners of their respective counties. Fifth—By all other officers holding office by appointment, to the officer, body, or board that appointed them.

State v. Clark, 3 Nev. 566; Williams v. Beck, 24 Nev.

OF VACANCIES.

Vacancies, How Occasioned.

1816. SEC. 35. Every office shall become vacant upon the occurring of either of the following events before the expiration of the term of such office: First—The death or resignation of the incumbent. Second—The removal of the incumbent from office. Third—The confirmed insanity of the incumbent, found upon a commission of lunacy, issued to determine the fact. Fourth—A conviction of the incumbent of any felony or offense involving a violation of his official oath or bond. Fifth—A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in section twenty-two of this Act; or, when a bond is required by law, his refusal or neglect to give such bond within the time prescribed by law. Sixth—The ceasing of the incumbent to be a resident of the state, district, county, city, or precinct, in which the duties of his office are to be exercised, or for which he shall have been elected or appointed. Seventh—The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the state, upon leave, as provided by law. Eighth—The decision of a competent tribunal declaring the election or appointment void or the office vacant.

INSANITY OF DISTRICT JUDGE. Where a District Judge was pronounced insane and sent to an insane asylum under the provisions of the statute for the care of insane persons, and upon a certificate thereof, the Governor appointed another person to fill his office as in case of a vacancy: *Held*, that the office was not vacant, and that the appointment of another Judge was void. O'Neale v. McClinton, 5 Nev. 329.

STATUTE CONCERNING INSANE PERSONS—VACANCY IN OFFICE. The finding and declaration of an incumbent of the office of District Judge to be insane, in accordance with the provisions of the statute for the care of the insane does not create a vacancy in his office. *Id.*

CONSTITUTIONAL CONSTRUCTION—REMOVAL OF JUDGES FROM OFFICE. As the constitution (Art. VII, Sec. 3) provides for the removal from office of Judges in a certain manner by the legislature, such provision is exclusive and prohibitory upon the legislature of other means for such removal. *Id.*

OFFICE, HOW VACATED. An office presently filled cannot become vacant without a removal either voluntary or involuntary; when voluntary, no judicial determination resulting in vacation is necessary; when involuntary, such determination is essential, unless otherwise provided by the constitution or laws in pursuance thereof. *Id.*

ARGUMENT OF INCONVENIENCE. The argument of inconvenience can have no weight in the construction of a law; or at most, only in the case of a very doubtful point. *Id.*

Member of Legislature.

1817. SEC. 36. But when a vacancy shall occur in the office of a Member of the Legislature during the session thereof, such vacancy shall be notified to the Governor, by the presiding officer of the house in which such vacancy shall have occurred.

Removal.

1818. SEC. 37. Whenever any officer shall be removed from office on impeachment and conviction, as declared in the constitution and laws of this state, it shall be the duty of the Secretary of State to transmit a certified copy thereof to the officer (as the case may be), whose duty it shall be to order an election, or make an appointment to supply the vacancy caused by the removal of such officer from office.

When Declared Vacant.

1819. SEC. 38. The Governor shall declare vacant the office of every state officer, and the office of District Judge; and the Board of County Commissioners shall declare the office of every county officer, except the District Judge, required by law to execute an official bond, whenever a final judgment shall be obtained against such officer for a breach of the conditions of such bond, or whenever such officer shall be finally convicted of a felony, or any offense involving a violation of his official oath.

Cause of Vacancy Certified to Governor or Commissioners.

1820. SEC. 39. Whenever a vacancy occurs in any office, as specified in this Act (except in cases of resignations made to the Governor or legislature, or Board of County Commissioners, in which cases it is the duty of the Governor and such Boards of County Commissioners to issue a writ of election, or make an appointment to fill such vacancy, as the case may be), the Secretary of State, or Clerk of the Board of County Commissioners of the county where such officer exercised the duties of his office, if confined to a single county; and, if not thus confined, then the Clerk of the Board of County Commissioners, where such officer last resided, previous to the occurring of such vacancy, shall certify to the Governor, or such Board of County Commissioners, the cause of such vacancy, and if such vacancy occurs from the confirmed insanity of the incumbent, or from his conviction of a felony, or an offense involving a violation of his official bond or oath, the Secretary of State, or Clerk of such Board of County Commissioners, shall also accompany their certificate by a certified copy of a judgment found upon the commission of lunacy, or a certified copy of the record of conviction for such felony or offense, as the case may be.

OF SUPPLYING VACANCIES.

Vacancies, How Supplied.

1821. SEC. 40. Whenever a vacancy shall occur, during the recess of the legislature, in any office which the legislature is authorized to fill by election, or which the Governor, subject to confirmation by the senate, is authorized to fill, the Governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

POWER OF GOVERNOR TO APPOINT TO VACANCY—POWER OF LEGISLATURE TO FILL NEW OFFICE—VACANCY IN NEW OFFICE—MEANING OF VACANCY IN CONSTITUTION—APPOINTMENT TO TAKE EFFECT AT FUTURE DAY. Clark v. Irwin, 5 Nev. 111.

When Temporary Appointments Made.

1822. SEC. 41. When, at any time, there shall be in either of the county or precinct offices (except the office of District Judge) no officer duly authorized to execute the duties thereof, some suitable person may be temporarily appointed by the Board of County Commissioners to perform the duties of such offices, until they are filled by election or appointment, as provided by law; *provided*, that in case there is no Board of County Commissioners in such county, the Governor may, on notice of such vacancy, create or fill such board.

Sawyer v. Hayden, 1 Nev. 75.

To Qualify.

1823. SEC. 42. Any person so appointed, in pursuance of either of the last two preceding sections, shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law of the officer in whose place he shall be appointed; and he shall continue to exercise and perform the duties of the office to which he shall be so appointed until the election of his successor at the next session of the legislature, or the next general election, and the qualification of such successor thereafter.

When Powers of Governor May Devolve on Lieutenant-Governor.

1824. SEC. 43. In case of the impeachment of the Governor, or his removal from office, death, or inability to discharge the powers and duties of the office, resignation, or absence from the state, the powers and duties shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the legislature, be out of the state in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military forces of the state.

When President Pro Tem. of the Senate to Act as Governor.

1825. SEC. 44. If, during the vacancy in the office of the Governor, the Lieutenant-Governor shall die, be impeached, displaced, resign, or become incapable of performing the duties of his office, or be absent from the state, the President pro tem. of the Senate shall act as Governor until the vacancy shall be filled or the disability shall cease.

When Senate to Elect a President.

1826. SEC. 45. Whenever the government is administered by the Lieutenant-Governor, or he shall be unable to attend as President of the Senate, the senate shall elect one of its own members as President for that occasion.

Vacancies to Be Filled by Governor During Recess of Legislature.

1827. SEC. 46. Vacancies that may occur in office, the appointment of which is vested in the Governor and senate, or in the legislature, shall be filled by the Governor during the recess of the legislature, by granting commissions which shall expire whenever the Governor and senate, or the legislature, shall appoint a person or persons to fill said offices.

Governor to Apprise Legislature of Appointments.

1828. SEC. 47. It shall be the duty of the Governor to lay before the legislature, at the earliest day practicable, a statement of all appointments made by him since the preceding session to fill vacancies.

Vacancies Filled by Governor.

1829. SEC. 48. Whenever any vacancy shall occur in the office of Justice of the Supreme Court or District Judge, or any state officer, the Governor shall fill the same by granting a commission, which shall expire at the next general election by the people and upon the qualification of his successor, at which election such officers shall be chosen for the balance of the unexpired term.

Vacancies in County or Township Offices, How Filled.

1830. SEC. 49. When any vacancy shall exist or occur in the office of County

Clerk, or any other county or township office, except the office of District Judge, the Board of County Commissioners shall appoint some suitable person to fill such vacancy until the next general election.

OF PENALTIES FOR BRIBERY, EXTORTION, EMBEZZLEMENT, MISCONDUCT IN OFFICE,
AND TO ENFORCE OFFICIAL DUTY.

I—Of Bribery.

Judge, Justice or Member of Legislature—Punishment.

1831. SEC. 50. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any Judge, or Justice of the Peace, acting within this state, or to corrupt, induce such Judge or Justice of the Peace to be more favorable to one side than the other, in any suit, matter, or cause, depending, or to be brought before him or them, or shall, directly, give any sum or sums of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain, procure, or influence any member of the legislature, or to incline, induce, or influence any such member of the legislature to be more favorable to one side than to the other, on any question, election, matter or thing pending or to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with the intent, and for the purpose aforesaid; and the Judge, Justice of the Peace, or member of the legislature, who shall receive or accept the same, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than eleven years, and shall be disqualified from holding any office of honor, trust, or profit, in this state.

Persons Giving or Officers Receiving Bribes.

1832. SEC. 51. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment of any present or reward, or any other thing, to any Judge, Justice of the Peace, Sheriff, Clerk, Constable, Public Administrator, Jailer, Attorney-General, District or City Attorney, member of the legislature, or other officer, ministerial or judicial (but such fees as are allowed by law), the person so giving, and the officer so receiving, any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than eleven years, and shall be disqualified to hold any office of honor, trust, or profit, in this state.

Attempting to Bribe Officers.

1833. SEC. 52. Every person who shall offer or attempt to bribe any member of the legislature, Judge, Justice of the Peace, Sheriff, Public Administrator, Clerk, Constable, Jailer, Attorney-General, District or City Attorney, or other ministerial or judicial officer, in any of the cases mentioned in the two preceding sections, and every member of a legislature, Judge, Justice of the Peace, Sheriff, Public Administrator, Clerk, Constable, Jailer, Attorney-General, District or City Attorney, or other ministerial or judicial officer who shall propose or agree to receive any bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the state prison for a term not less than one nor more than seven years, and shall be disqualified to hold any office of honor, trust, or profit, in this state.

II—Of Extortion.

How Punished.

1834. SEC. 53. If any Judge, Justice of the Peace, Sheriff, Public Adminis-

trator, Clerk, Constable, or other officer of this state, ministerial or judicial, shall willfully charge and receive any fee or reward larger than is allowed by law to do, or execute his duty as such officer, or if any such officer shall willfully or corruptly ask or demand, as a condition precedent to the performance of his duty, as such officer, any fee or reward, except such as are allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof shall be fined in any sum not less than two hundred dollars nor more than one thousand dollars, and removed from office.

III—Of Embezzlement.

How Punished.

1835. SEC. 54. Every servant, officer, or person employed in any public department, station or office of the government of this state, or of any county, city, or town, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of records, or of account, bond or bonds, bank bill or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of the said state, county, city, town, or corporate body, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than eleven years.

Officer Refusing to Pay Over Public Funds—Punishment—Proviso.

1836. SEC. 55. If any officer or person who now is, or hereafter may be intrusted by law to collect, disburse, receive, or safely keep any money or moneys, revenue or revenues belonging to this state, to the school fund of the state, to the school fund of any county, city, or town, to any county, city, or town in this state, to any canal, turnpike, or railroad fund of this state, or to any fund for the improvement of any public road, river, creek or other water course bordering on or within this state, or to any other fund now being, or hereafter to be, established by law for public purposes, who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officer or person shall receive for disbursement, and has not been disbursed, or shall collect, or shall receive, for safe keeping, belonging to this state, to any county, city, or town of this state, or to any such fund, as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders, ought, by law, to be paid over to his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable, every such officer or person shall be deemed guilty of embezzlement, and, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than five years; *provided*, that no person shall be imprisoned in the state prison, under this section, unless the money not paid over shall amount to one hundred dollars; or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust, or profit, in this state.

Officers Intrusted With Safe Keeping of Money, Guilty of Embezzlement in Certain Cases.

1837. SEC. 56. If any officer of this state, or of any county, city, town, or corporation in this state, charged with the safe keeping, transfer or disbursement of public moneys, or moneys of such corporation, shall convert to his own use, in any manner whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of such moneys, bonds, or other evidence of indebtedness of the state, county, city, town, or corporation, intrusted to him for safe keeping, transfer, disbursement, or any other purpose, every such act shall be deemed and adjudged to be an embezzlement of so much money as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be a felony. And the neglect or refusal to

pay over, on demand, any such moneys in his hands upon the presentation of a draft, or order, or warrant drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly, according to law, on the legal requirements, of any officer authorized to make such requirements, shall be prima facie evidence of such conversion to his own use of such moneys as may be in his hands; and it shall not be necessary in an indictment, under this section, to particularly describe the kind of money converted or embezzled, nor upon the trial shall it be necessary to prove the embezzlement of any specific moneys. All persons advising, or knowingly and willfully practicing such embezzlement, upon being convicted thereof, before any court of competent jurisdiction, shall, for every such offense, forfeit and pay to the state, county, city, town, or corporation, a fine equal to the amount embezzled, and shall suffer imprisonment in the state prison for a term not less than one nor more than five years, and shall forever thereafter be disqualified from holding any office of honor, trust, or profit, in this state. *As amended, Stats. 1881, 82.*

IV—Of Misconduct in Office.

Misconduct by Clerk or Inspector of Election.

1838. SEC. 57. If any Inspector or Clerk of an election shall, previous to putting the ballot of any elector in the ballot box, and without the consent of such elector, attempt to pry into and find out any name or names on such ballot, which shall have been handed in by such elector in a folded form; or if any Inspector or Clerk of any election shall open, or suffer the folded ballot of an elector, which has been handed in to the Board of Inspectors, to be opened or examined into, without the consent of such elector, previous to putting the same into the ballot box; or if any Inspector or Clerk of any election, or any Registry Agent, or any other person, during the time of the canvassing of the votes polled, or subsequent thereto, or at any other time, shall, without the consent of such elector, compare the number of any vote polled, or suffer any one else to do so, with the corresponding number on the poll book, for the purpose of ascertaining how any elector voted; or if any Inspector or Clerk of an election, or any Registry Agent, having intentionally or unintentionally discovered the name or names of any person or persons voted for by an elector, at any election, and shall disclose the same, any such Inspector or Clerk of any election, Registry Agent, or person so offending, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars.

For Trying to Control Vote.

1839. SEC. 58. If any Inspector or Clerk of an election, while acting as such, shall induce, or attempt to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector shall intend or desire to vote, such officer so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

Willful Neglect or Corrupt Conduct by Officer.

1840. SEC. 59. If the Secretary of State, or any Inspector, Clerk of any election, Register, or any other officer, on whom any duty is enjoined by this Act, shall be guilty of any willful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year.

Duty of Secretary of State Upon Failure to Receive Returns.

1841. SEC. 60. It is hereby made the duty of the Secretary of State, after the expiration of thirty days from and after each election of Governor, Lieutenant-Governor, Representatives in Congress, and state and county officers, to certify to the proper District Attorneys any and all failures and omissions of the Boards of County Commissioners, and their Clerks and other officers, in their

respective counties, to comply with the provisions of this Act, in returning, or certifying the returns or certificates of any such election, to the office of the Secretary of State, and every such certificate of the Secretary of State, sealed with the state seal, shall be sufficient presumptive evidence of any such failure or omission herein specified.

Stealing, Altering or Defacing Records.

1842. SEC. 61. If any Judge, Justice of the Peace, Sheriff, Public Administrator, Clerk, Recorder, or any other public officer, or any other person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall, knowingly or willfully, take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceedings whatever, of, or belonging to any public office within this state, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term of not less than one nor more than eleven years, and fined in any sum not exceeding five thousand dollars.

Inhumanity to Prisoners.

1843. SEC. 62. Every Sheriff, or Jailer, or person who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and be removed from office.

Refusing to Deliver Records.

1844. SEC. 63. If any officer, whose office shall be abolished by law, or who, after the expiration of the term for which he may be appointed or elected, or after he shall have resigned, or when legally removed from office, shall willfully or unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction thereof, be punished by imprisonment in the state prison for a term of not less than one nor more than eleven years. The provisions of this section shall apply to any person or persons who have such records, documents, papers, or other writings in his, her, or their possession, and shall willfully mutilate, withhold, or detain the same, as aforesaid.

Obstructing Officers in Service of Process.

1845. SEC. 64. If any person shall, knowingly and willfully, obstruct, resist, or oppose any Sheriff, Deputy Sheriff, Public Administrator, Constable, Marshal, policeman, or other officer of this state, or other person duly authorized, in serving or attempting to serve any legal process or order of any court, Judge, or Justice of the Peace, or any other legal process whatever, or shall assault or beat any such officer or person duly authorized, in serving or executing, or attempting to serve or execute, any order of process, as aforesaid, or for having served or executed it, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the state prison for a term not less than one nor exceeding seven years; *provided*, that any officer or person whatsoever who may or shall assault or beat any individual, under cover of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Voluntarily Permitting Escape.

1846. SEC. 65. If any Sheriff, Deputy Sheriff, or Jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in his or their custody, every such person or persons, on conviction thereof, shall be punished

by imprisonment in the state prison for a term not less than one nor exceeding eleven years, and be fined in a sum not exceeding ten thousand dollars.

Officers Permitting Escape Before Conviction.

1847. SEC. 66. If any Sheriff, Public Administrator, Jailer, keeper of a prison, Constable, or other officer or person whatever, having any prisoner in his legal custody before conviction, shall voluntarily suffer or permit such person to escape or go at large, every such officer or person so offending shall, on conviction thereof, be fined in any sum not exceeding five thousand dollars and imprisonment in the state prison not less than one nor exceeding seven years; *provided*, that if such person be in custody, charged with murder, or other capital offense, then such officer or person suffering or permitting such escape shall be punished by imprisonment in the state prison for any term not less than one nor more than eleven years. A negligent escape of a person charged with criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be punished by imprisonment in the state prison for a term of not less than one nor exceeding seven years, or shall be fined in a sum not less than one thousand nor exceeding five thousand dollars.

Officer Refusing to Receive or Arrest.

1848. SEC. 67. If any Sheriff, Public Administrator, keeper of a jail, Constable, or other officer, shall willfully refuse to receive or arrest any person charged with criminal offense, such Sheriff, Public Administrator, Jailer, Constable, or other officer so offending, shall, on conviction thereof, be fined in any sum not less than one thousand nor exceeding five thousand dollars, or imprisonment in the state prison not exceeding five years, and removed from office.

Purchasing Judgment.

1849. SEC. 68. If any Justice of the Peace or Constable of the same precinct shall, directly or indirectly, purchase any judgment, or any part thereof, on the docket of such Justice, or any docket in his possession, he shall, upon conviction thereof, be fined for each and every offense so convicted of, in any sum not less than one hundred nor more than one thousand dollars.

Selling Office.

1850. SEC. 69. Every person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity paid, or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office (except his lawful deputies), shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and shall be removed from office; and every such person who shall so give, or make any such agreement to give, any reward or gratuity in consideration of such grant or authority, shall, upon conviction thereof, be fined in any sum not less than five hundred nor exceeding five thousand dollars.

Officers Not Preventing Duel.

1851. SEC. 70. If any Judge, Justice of the Peace, Sheriff, or other officer bound to preserve the public peace, shall have knowledge of an intention, on the part of any two persons, to fight with a deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Purchasing Warrants and Scrip.

1852. SEC. 71. The State Treasurer and Controller, the several county, city, or town corporation officers of this state, are hereby expressly prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use and benefit of any person or persons whatever, any state, county, or city warrants, scrip, orders, demands, claim or claims, or other evidences of indebtedness against the state, or any county, city, or town thereof; and any such

officer, for each and every offense so convicted of, shall be punished by fine not less than five hundred nor more than one thousand dollars, and shall be imprisoned in the state prison for a term not less than two months nor more than two years; such conviction shall operate as a forfeiture of office, and the party convicted shall forever be disqualified from holding any office of honor, profit, or trust in this state. Any person giving information which shall lead to the conviction of any person, under the provisions of this section, shall be entitled to receive one-half of the fine adjudged against and collected from such officer.

Purchasing Evidence of Indebtedness.

1853. SEC. 72. The State Treasurer and Controller, all county, city, or town corporation officers, are prohibited from purchasing or being interested, or receiving, or selling, or transferring, or causing to be purchased, received, sold, or transferred, either in person, or by agent, or attorney, or by or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the state, county, city, or town corporation thereof, either directly or indirectly; nor shall any clerk or employee of any such officer or officers, nor the commissioners employed, or to be employed, to fund any county, city, or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or to receive any agency from other parties to purchase, sell, transfer, or bargain, in any manner, for any state, county, city, or town corporation warrants, scrip, demands, or other evidence of indebtedness, against the state, or any county, city, or town corporation thereof. Any person guilty, and convicted of a violation of any of the provisions of this section, shall be punished for each and every offense so convicted of, as provided in the foregoing section.

Fines to Be for Use of County.

1854. SEC. 73. All fines collected under the provisions of said sections shall be for the use of the county, except as above provided.

Provisions of Foregoing Sections, How Construed.

1855. SEC. 74. The provisions of said sections shall not be construed so as to prohibit any state officer from purchasing or selling county or city warrants, or any county or city officer from purchasing the warrants of the state, or of any other city or county, or to prevent any state, county, or city officer from selling or transferring such warrants or scrip as he may receive for his services, but none other.

Unlawful for Officer to Have Interest in Contract.

1856. SEC. 75. It shall not be lawful for any officer of state, or member of the legislature, Alderman, or member of the Common Council of any city in this state, or for the Trustees of any city, town, or village, or for any County Commissioners of any county, to become a contractor under any contract or order for supplies, or any other kind of contract authorized by or for the state, or any department thereof, or the legislature, or either branch thereof, or by or for the Aldermen or Common Council, Board of Trustees, or Board of County Commissioners of which he is a member, or to be in any manner interested, directly or indirectly, as principal, in any kind of contract so authorized.

Officers Not to Be Interested.

1857. SEC. 76. It shall not be lawful for any town, city, county, or state officer, or member of the legislature, to be interested in any contract made by such officer, or legislature of which he is a member, or be a purchaser, or be interested in any purchase of a sale made by such officer in the discharge of his official duties.

Contracts May Be Declared Void.

1858. SEC. 77. All contracts made in violation of the provisions of the two

preceding sections (or either of them) of this Act, may be declared void, at the instance of the state, city, town, or village, or county interested, or of any other party interested in such contract, except the officers prohibited in said sections from making or being interested in such contract.

When May Forfeit Office.

1859. SEC. 78. Any person violating the provisions of sections seventy-five and seventy-six (or either of them) of this Act, directly or indirectly, shall forfeit his office, and shall be punished by fine, not less than five hundred nor more than five thousand dollars, or by imprisonment.

V—Of Official Duty.

Ignorance of official duty no excuse. *State v. Kruttschnitt*, 4 Nev. 178.

Civil and Peace Officers.

1860. SEC. 79. It shall be the duty of all civil and peace officers in this state to be vigilant in carrying the provisions of section forty, of the Act concerning crimes and punishments, approved November twenty-sixth, eighteen hundred and sixty-one, into full force and effect; as well also as all grand juries to inquire into and make presentments of each and every offense, under said section, which shall come under or within their knowledge. It shall be and is hereby made the duty of all Judges in this state to give said section in charge to the grand juries at each term of their respective courts; and also to all trial juries impaneled for the trial of any of the offenses mentioned in said section.

Reward Offered by Governor.

1861. SEC. 80. If any person who has been sentenced to confinement in the state prison, by any court having competent authority within this state, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the Governor is authorized and required, upon satisfactory evidence of the guilt of the accused, to offer a reward for his apprehension, which reward shall not exceed the sum of five thousand dollars, and shall be paid out of the general fund.

Justified Killing—Proviso.

1862. SEC. 81. If any officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If any officer or private person attempt to take a person charged with felony, and he be resisted in endeavoring to take the person accused, and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified; *provided*, that such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance and the consequent escape of such person.

Mayor May Order Police Force.

1863. SEC. 82. The Mayor or other officer having the direction of the police in a city, town, or village, shall order a force sufficient to keep the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

Officer May Command Assistance When Resistance Is Apprehended.

1864. SEC. 83. When a Sheriff, or other public officer authorized to execute process, shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his county, as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished according to law.

To Certify to Court the Names of Resisters.

1865. SEC. 84. The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

Persons Refusing to Obey Officer.

1866. SEC. 85. Every person commanded by a public officer to assist him in the execution of process, as provided in section eighty-three, who shall, without lawful cause, refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Governor May Order Military Force.

1867. SEC. 86. If it appear to the Governor that the power of any county is not sufficient to enable the Sheriff to execute process delivered to him, he shall, on the application of the Sheriff, order such military force from any other county or counties as shall be necessary.

Riotous Assemblage.

1868. SEC. 87. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled in any city or town, the Sheriff of the county and his deputies, the Mayor and Aldermen of the city, or the Constable of the town, and the Justices of the Peace, shall go among the persons so assembled, or as near as possible, and shall command them, in the name of the people of the United States and the State of Nevada, immediately to disperse.

To Order to Disperse.

1869. SEC. 88. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Persons Neglecting to Aid Magistrate.

1870. SEC. 89. If a person so commanded to aid the magistrates or officers neglect or refuse to do so, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

Refusing to Use Authority to Suppress Riot.

1871. SEC. 90. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section eighty-seven, neglect or refuse to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

May Command Aid.

1872. SEC. 91. If the persons so assembled and commanded to disperse, do not immediately disperse, any magistrate or officer before mentioned may command the aid of a sufficient number of persons, and proceed in such manner as in his judgment is necessary to disperse the assembly and arrest the offenders.

Armed Force to Obey Orders.

1873. SEC. 92. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the Governor, or by a Judge of a court of record, or the Sheriff of the county, or by a magistrate, or any other officer authorized by law to make such order.

May Call Out Troops.

1874. SEC. 93. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist, by force, the laws of the state, and the fact is made to appear to the Governor, or

to a Judge of the District Court, or to the Sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division, brigade, regiment, battalion, or company, to order his command, or any part thereof (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authorities in suppressing violence and enforcing the laws.

Commanding Officer to Obey Orders.

1875. SEC. 94. The commanding officer, to whom the order is given, shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and equipped with ammunition as per inspection, and shall execute any order that they shall then and there receive, according to law.

When Governor May Declare County in Insurrection.

1876. SEC. 95. When the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men, or that combinations to resist the execution or process by force, exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, of the District Attorney, or District Judge of the county, by proclamation, to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the state such number and description of volunteers, or uniformed companies, or other militia of the state, as he shall deem necessary, to serve for such term, and under the command of such officers as he shall direct.

May Revoke Proclamation.

1877. SEC. 96. The Governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

Auditing Accounts—Affidavit of Officer Filed.

1878. SEC. 97. It shall, in all cases, be the duty of all officers who may be called upon to audit and allow the accounts of either state, county, city, or town officers, to take and file an affidavit of said officers that they have not violated any of the provisions of this Act, and for that purpose all officers authorized by law to audit and allow accounts, are hereby empowered and required to administer oaths and affirmations, which shall have the same force and validity in all actions for perjury, as if administered by a judicial officer.

When Treasurer May Refuse to Redeem Warrant.

1879. SEC. 98. It shall be the duty of the State Treasurer, and the several County, City, or Town Corporation Treasurers, of the state, to refuse to redeem any warrants, scrip, orders, or other evidence of indebtedness against the state, or any county, city, or town corporation thereof, whenever it shall come to their knowledge that such warrants, scrip, or other evidence of indebtedness have been purchased, sold, received, or transferred in violation of any of the provisions of this Act.

May Sell Indebtedness for Services Rendered.

1880. SEC. 99. All public officers referred to in any of the sections of this Act shall have the right to sell or transfer any evidence of public indebtedness which may be issued according to law, for services rendered by them to the state, county, city, or town corporation, legally and justly due, and this Act shall not be deemed to prevent the purchase, sale, or transfer of any funded public indebtedness whatever of the state, or of any county, city, or town corporation.

Settlement or Payment Withheld.

1881. SEC. 100. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidence of public indebtedness, when he

taking, the office or appointment of the person or officer so failing shall become vacant, and such officer or person shall forfeit his office or appointment, and the same shall be filled as in other cases of vacancy, and in manner as provided by law, and the person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon, after the date herein provided for the vacating and forfeiting of such office or appointment; *provided*, if a number of sureties on any such bond or undertaking, representing half the amount of the penalty thereof, shall unite in the same, or file and serve separate statements as herein provided, the right of such officer or person to exercise the duties and functions of his office, or appointment, shall immediately cease, until he shall file and have accepted and approved a new or additional bond or undertaking. Whenever by operation of this Act, the functions of any Sheriff shall become suspended, it shall be the duty of the Clerk with whom the statement as herein-before provided shall have been filed, to notify the acting Coroner of the county forthwith of such suspension; and upon being so notified, such Coroner shall succeed to all the powers, and discharge all the duties of Sheriff of his county, pending such suspension of the functions of the Sheriff.

Sureties on Original Bond Liable.

1890. SEC. 4. In case a new or additional bond or undertaking be filed, the sureties on the original, not asking to be released, and on the new or additional bond or undertaking, shall be and continue liable for the official acts of such officer or person jointly and severally, the same as if all were sureties on one and the same instrument.

Penalty of New Bond.

1891. SEC. 5. Whenever a statement is filed, or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed, and if no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

An Act concerning official bonds.

Approved March 14, 1885, 401.

Form of Bond.

1892. SECTION 1. All official bonds required by law of officers shall be in form joint and several, and made payable to the State of Nevada, in such penal sum, and with such conditions, as may be required by law.

Bonds Continued in Force—Subsequent Law to Apply.

1893. SEC. 2. Every official bond executed by any officer pursuant to law shall be deemed and taken to be in force, and shall be obligatory upon the principal and sureties therein, for any and all breach of the condition or conditions thereof, committed during the time such officer shall continue to discharge any of the duties of, or hold such office; and every such bond shall be deemed to be in force and obligatory upon the principal and sureties therein, for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition shall be expressed therein.

Who May Bring Suit.

1894. SEC. 3. Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the State of Nevada, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his or her own name, without an assignment thereof.

Defect in Bond Not Material.

1895. SEC. 4. Whenever any such official bond shall not contain the substantial matter, or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be bound to the state or party interested, and the state or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond, or such approval or filing, and recover his proper and equitable demand or damages from such officer, and the person or persons who intended to become and were included in such bond as sureties.

How Official Bonds Are Approved—Proviso.

1896. SEC. 5. The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the Secretary of State shall be approved by the Governor, and filed and recorded in the office of the County Clerk of the county in which the seat of government is fixed. The official bond of all other state officers, required by law to give bond, shall be approved by the Governor, filed and recorded in the office of the Secretary of State. The official bond of all county and township officers shall be approved by the Board of County Commissioners, and filed and recorded in the office of the County Clerk of their respective counties; *provided*, that the bond of the County Clerk shall be filed and recorded in the office of the County Recorder of the proper county.

Additional Bond, When Required.

1897. SEC. 6. Whenever the sureties, or any one of them, in the official bond of any county or township officer, shall die, remove without the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient on account of recoveries had thereon, or otherwise, it shall be the duty of the Board of County Commissioners of the proper county, of their own motion, or on the showing of any person supported by affidavit, to summon any such officer to appear before them, at a time stated, not less than three days after service of such summons, and show cause why he should not execute an additional official bond with good and sufficient sureties.

Office Vacant, When.

1898. SEC. 7. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence. If, after examination, the Board of County Commissioners shall be of opinion that the bond of such officer has become insufficient, from any cause whatever, they shall require an additional bond, with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the Board of County Commissioners may order; and if any officer shall fail to execute and file such additional bond within the time specified by such order, his office shall become vacant.

Official Bond of State Officer—Proviso.

1899. SEC. 8. Whenever the official bond of any state officer shall become insufficient, from any cause whatever, the like proceedings may be had before the district court of the district in which said state officer holds his office, with reference thereto; *provided*, that such proceedings shall be commenced by a written motion, supported by affidavit.

Force of Additional Bond.

1900. SEC. 9. Every such additional bond shall be of like force and obligation upon the principal and sureties therein, and shall subject the officer and his sureties to the same liabilities as are prescribed respecting the original bonds of officers.

Number of Sureties.

1901. SEC. 10. Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer.

Justification of Sureties on Bond.

1902. SEC. 11. In all cases where official bonds are required, or may be hereafter required, from state, county or township officers, the officer or officers whose duty it is, or may be, to approve such bonds, shall not accept or approve any such bonds unless the sureties thereon shall severally justify before an officer authorized to administer oaths, as follows:

First—On a bond given by a state officer that he is a resident and freeholder or householder within this state, and on a bond given by a county officer that he is a resident and freeholder or householder within such county.

Second—That he is worth the amount for which he becomes surety over and above all his debts and liabilities in property situated within this state which is not exempt from sale or execution. *As amended, Stats. 1889, 34.*

Liability of Sureties.

1903. SEC. 12. When the penal sum of any bond amounts to more than two thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars of such penal sum, making in the aggregate at least two sureties for the whole penal sum.

State v. Rhoades, 6 Nev. 352; Alderson v. Mendes, 16 Nev. 298.

STATE OFFICERS.

LEGISLATURE.

An Act to provide for the allotment of Senators of the State of Nevada.

Approved March 7, 1873, 190.

Allotment of Senators.

1904. SECTION 1. The senate shall, in the case of any county in this state which shall by law, be entitled to two Senators, where such county shall have been created and organized since the adoption of the Constitution of the State of Nevada, at such time as the senate shall, by resolution, direct, proceed to divide the Senators by lot into two classess; *provided*, that this Act shall not apply to any county, the representation of which, in the senate, shall have been, by an Act of the legislature, divided into terms of two and four years.

Terms of Senators of First and Second Class.

1905. SEC. 2. Such allotments shall be as follows: Two tickets, not distinguishable from each other, by reason of any difference in size, form, or color, shall be prepared and placed in a box, upon one of which tickets shall be written the words "first class," and upon the other the words "second class." The roll of Senators from such counties shall be called in alphabetical order; and the President of the Senate shall appoint a Page, to be blindfolded, who shall draw from a box, to be prepared for that purpose, one of the tickets, as each member's name is called; and the words upon the ticket so drawn shall designate the class to which each Senator shall belong. The seats of the Senators of the first class shall be vacated on the day succeeding the general election, four years after such Senator shall have been elected; and the seats of the Senators of the second class shall be vacated on the day succeeding the general election, two years after such Senator shall have been elected.

An Act for the reapportionment of Senators and Assemblymen in the several counties of this state.

Approved March 3, 1891, 23.

Number of Senators and Assemblymen.

1906. SECTION 1. The apportionment of Senators and Assemblymen in the several counties of this state shall be as follows: Churchill county, one (1) Senator and one (1) Assemblyman; Douglas county, one (1) Senator and one (1) Assemblyman; Elko county, one (1) Senator and four (4) Assemblymen; Esmeralda county, one (1) Senator and two (2) Assemblymen; Eureka county, one (1) Senator and two (2) Assemblymen; Humboldt county, one (1) Senator and three (3) Assemblymen; Lander county, one (1) Senator and one (1) Assemblyman; Lincoln county, one (1) Senator and two (2) Assemblymen; Lyon county, one (1) Senator and two (2) Assemblymen; Nye county, one (1) Senator and one (1) Assemblyman; Ormsby county, one (1) Senator and three (3) Assemblymen; Storey county, one (1) Senator and four (4) Assemblymen; Washoe county, two (2) Senators and four (4) Assemblymen; White Pine county, one (1) Senator and one (1) Assemblyman. *As amended, Stats. 1899, 121.*

An Act to fix the number of officers and attaches of the Legislature of the State of Nevada, and to define their duties and specify their pay.

Approved March 2, 1891, 21.

Senate Officers.

1907. SECTION 1. The officers and attaches of the senate shall consist of one Secretary, one Assistant Secretary, one Sergeant-at-Arms, one Minute Clerk, one Journal Clerk, one Engrossing Clerk, one Enrolling Clerk, one Copying Clerk, one Committee Clerk, one Messenger, one Page and one Porter. *As amended, Stats. 1893, 130.*

Assembly Officers.

1908. SEC. 2. The officers and attaches of the assembly shall consist of one Chief Clerk, one Assistant Clerk, one Sergeant-at-Arms, one Minute Clerk, one Journal Clerk, one Engrossing Clerk, one Enrolling Clerk, one Copying Clerk, one Committee Clerk, one Messenger, one Page and one Porter. *As amended, Stats. 1893, 130.*

Compensation.

1909. SEC. 3. There shall be paid to the several officers and attaches named in this Act, for all services rendered by them under the provisions of this Act, the following sums of money and no more: The Secretary of the Senate and the Chief Clerk of the Assembly shall each receive seven dollars per day; the Assistant Secretary of the Senate and the Assistant Clerk of the Assembly shall each receive six dollars per day; the Minute Clerk, the Journal Clerk, the Engrossing Clerk shall each receive six dollars per day, and the Enrolling Clerk of the Senate and Assembly shall each receive five dollars per day; the Sergeant-at-Arms of the Senate and the Sergeant-at-Arms of the Assembly shall each receive the sum of six dollars per day; the Copying Clerks of the Senate and the Assembly shall each receive the sum of five dollars per day; the Committee Clerk of the Senate and Assembly shall each receive the sum of five dollars per day; the Messenger of the Senate and of the Assembly shall each receive the sum of four dollars per day; the Page of the Senate and of the Assembly shall each receive two dollars per day; the Porter of the Senate and of the Assembly shall each receive three dollars per day; *provided, however, that in case either the Senate or Assembly shall organize or act with a less number of attaches than herein provided, such organization or action shall be legal; and provided, further, that either the senate or assembly may, by resolution, increase or diminish the number of*

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Compensation.

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its attaches at any time during the session, within the limits hereinbefore provided. *As amended, Stats. 1893, 130.*

Duties of Officers of the Senate and Assembly.

1910. SEC. 4. It shall be the duty of the Secretary of the Senate to attend each day, call the roll, read the journal and bills, to take charge of and superintend the copying of the journal. It shall be the duty of the Chief Clerk of the Assembly to attend each day, call the roll, read the journal and bills, to take charge of and superintend the copying of the journal. It shall be the duty of the Assistant Secretary of the Senate and the Assistant Clerk of the Assembly to take charge of all bills, petitions and other papers presented to their respective houses, to indorse a correct history thereon, and to file and enter the same in books provided for that purpose, and to perform such other duties as may be directed by the Secretary of the Senate and the Chief Clerk of the Assembly. It shall be the duty of the Minute Clerk of the Senate and of the Minute Clerk of the Assembly to keep a correct record of the proceedings of each day for the purpose of having such proceedings transcribed into the journals by the Journal Clerks of their respective houses. It shall be the duty of the Journal Clerk of the Senate to record each day's proceedings in the journal, from which they shall be read by the Secretary each day of meeting, in order that they may be authenticated by the signature of the President. It shall be the duty of the Journal Clerk of the Assembly to perform all similar duties for the assembly which are required to be performed by the Journal Clerk of the Senate. It shall be the duty of the Sergeant-at-Arms of the Senate and of the Sergeant-at-Arms of the Assembly to supervise, under the direction of the presiding officer, the senate and assembly chambers, with the rooms attached; to attend during the sittings of their respective bodies, execute their commands, together with all such process issued by authority thereof as shall be directed to them by the presiding officers; to keep an accurate account for paying mileage for members and to issue certificates for the same. They shall receive no other compensation for their services beyond their per diem, except actual expenses incurred in making arrests and for traveling expenses for themselves or special messengers, which expenses so incurred shall be paid from the contingent fund of their respective houses; *provided*, that no messenger shall be employed by any officer of either house unless expressly authorized so to do by the house of which he is an officer. It shall be the duty of the Messenger of the Senate and of the Messenger of the Assembly to perform the duties of doorkeeper, prohibit all persons, except members of the legislature, and state officers, employees and ladies, and such reporters as may have seats assigned to them by the rules of each house, from entering within the bar of the house of which he is doorkeeper, unless upon invitation, and to arrest for contempt all persons outside of the bar or in the gallery found engaged in loud conversation or otherwise making a noise disturbing their respective houses, and to perform such other duties as directed by their respective houses or the Sergeant-at-Arms thereof.

Books, etc., to Be Delivered to the Secretary of State—Compensation of Secretary of Senate and Chief Clerk.

1911. SEC. 5. It shall be the duty of the Secretary and Assistant Secretary of the Senate and of the Chief Clerk and Assistant Clerk of the Assembly, at the close of each session of the legislature, to mark, label and arrange all bills and papers belonging to the archives of their respective houses, and to deliver the same, together with all the books of both houses, to the Secretary of State, who shall certify to the reception of the same; and upon the production of said certificate to the Controller of State, the Controller is authorized and directed to draw his warrant upon the Treasurer, in favor of the above named parties, for the sum of ten dollars each, and the Treasurer is authorized to pay the same out of any money in the general fund not otherwise appropriated.

Officers to Be Elected by Each House.

1912. SEC. 6. All officers and attaches of the senate and assembly provided for in this Act shall be elected by the senate and assembly respectively. The senate and assembly may invite ministers of the different denominations to officiate alternately as Chaplains of their respective houses, at a compensation not to exceed two dollars per day for such services when rendered.

May Be Removed.

1913. SEC. 7. Any of the officers and attaches mentioned in this Act may be removed by a two-thirds vote of the members of the house in [to] which they are connected for failure to perform the duties imposed upon them by this Act, or for incompetency, or for conduct which shall by each [either] house be deemed improper.

Extra Officers Not to Be Appointed.

1914. SEC. 8. No other officers or attaches than these designated in this Act shall be elected or appointed.

Per Diem to Begin.

1915. SEC. 9. The per diem of all officers and attaches fixed by this Act shall date from the day on which they shall have been elected and qualified.

Construction of Act.

1916. SEC. 10. Nothing in this Act shall be construed so as to affect the term of office of any attache of the legislature herein named and appointed prior to the passage of this Act.

An Act providing for copying, engrossing and enrolling in the senate and assembly.

Approved March 6, 1893, 105.

May Employ Additional Clerks.

1917. SECTION 1. Whenever the Copying, Engrossing or Enrolling Clerks of the Senate or Assembly shall, by reason of an extraordinary accumulation of work in their offices, be unable, without assistance, to perform the whole of said work, the committee having charge of such work shall have authority to employ additional clerks temporarily; *provided*, they shall first have made a written report showing the necessity, and the house for which the labor is to be performed shall have adopted a resolution granting authority to that effect to the committee.

Price Per Folio for Copying and Engrossing.

1918. SEC. 2. The prices to be paid shall not exceed ten cents per folio for copying and comparing, fifteen cents per folio for engrossing and comparing, and twenty cents per folio for enrolling and comparing.

An Act to provide for the organization of the assembly at the commencement of each session.

Approved February 6, 1867, 47.

Secretary of State to Make Out Roll of Members of the Assembly.

1919. SECTION 1. It is hereby made the duty of the Secretary of State to make out, prior to the meeting of the assembly of each session thereof, a roll of the members elect, as shall appear by the returns on file in his office; and only such members whose names shall appear upon such roll shall be allowed to participate in the organization of the assembly.

Secretary of State to Call the Assembly to Order.

1920. SEC. 2. On the first day of each session of the legislature, at twelve o'clock m., the Secretary of State shall call the assembly to order, and shall preside over the same until a presiding officer shall be elected.

of the State of Nevada shall be without charge; all commissions issued to Directors of the Nevada State Agricultural Society, or to any agricultural society now organized, or that may be hereafter organized, shall be free; for searching records and archives of the state, and other records and documents kept in his office, he shall charge a reasonable fee. No member of the legislature, or any state officer shall be charged for any search or other service which relates to matters appertaining to official duties. All fees collected in the office of the Secretary of State shall be paid into the state treasury for the use and benefit of the library fund. (SEC. 2.) Section three of an Act entitled "An Act concerning trade marks and names" [Sec. 5042], in so far only as it conflicts with this Act, is hereby repealed. *As amended, Stats. 1893, 80.*

Power to Appoint Deputy.

1939. SEC. 14. The Secretary of State shall have power under his hand and seal to appoint a deputy, who may, during the absence of the Secretary of State from the office, perform all the duties of a ministerial nature belonging to the office; and for his own security the Secretary of State may require such deputy to give him a bond, in such sum and with such sureties as he may deem sufficient; *provided*, that the salary of such deputy shall not exceed two hundred dollars per month.

An Act relating to the duties of the Secretary of State.

Approved March 7, 1873, 177.

Biennial Report.

1940. SECTION 1. The Secretary of State of the State of Nevada shall, hereafter, prepare and render a biennial report to the Governor of Nevada, in like manner as the State Controller and Treasurer, in which report shall be included an exhibit, showing in detail all expenditures made by him or under his direction; all moneys received by him, from whatever source, and the disposition made of the same. Said report shall also include all matters relating to the general business of the office of Secretary of State during the period embraced in said report. He shall, also, in said report, give an itemized account of all statutes and Nevada reports distributed by him under the provisions of law, stating to whom such distribution is made and the amount of money received from the sale of any such statutes and reports, and the number of each year's issue remaining on hand.

Board of Examiners to Audit Expenditures.

1941. SEC. 2. All expenditures made by or under the directions of the Secretary of State shall be audited by the State Board of Examiners, and no warrant shall be issued by the State Controller for payment of such expenditures unless the same shall have been approved and allowed by said Board of Examiners.

An Act to provide for the recording of all contracts and agreements entered into by and between the State of Nevada and any person, persons, company or corporation.

Approved March 8, 1879, 109.

Filed With Secretary of State.

1942. SECTION 1. From and after the passage of this Act it shall be the duty of any officer, person or persons, authorized by law to enter into any agreement or contract on behalf of this state, to have the same reduced to writing, and after the signing of the same by the contracting parties, to deliver the said agreement or contract so reduced to writing, signed by the contracting parties, to the Secretary of State.

Recording and Filing.

1943. SEC. 2. It shall be the duty of the Secretary of State, immediately upon receiving said agreements or contracts mentioned in section one of this Act,

to file and record the same in a book to be kept for that purpose, to be known as the agreement and contract book.

An Act to provide for the preservation of the manuscript laws.

Approved March 2, 1871, 106.

SECTION 1 is obsolete.

Binding of Enrolled Laws.

1944. SEC. 2. It shall be the duty of the Secretary of State, after the final adjournment of each session of the legislature, and after all the laws, joint and concurrent resolutions, and memorials have been printed, as required by law, to cause all the enrolled bills of such laws, joint and concurrent resolutions, and memorials, to be bound in a suitable book, in junk board, marbled, with leather backs and corners. It shall be his duty to personally superintend such work, and at all times have immediate control thereof.

Expenses, How Paid.

1945. SEC. 3. The expense incurred in such work shall be paid by the state in such manner as may be directed by the State Board of Examiners.

An Act to provide for the preservation and sale of certain Nevada Reports.

Approved March 5, 1875, 132.

Nevada Reports for Use of Legislature.

1946. SECTION 1. The Secretary of State, shall keep on hand, for the exclusive use of the legislature, when in session, fifty copies of each volume of the Nevada Reports heretofore published.

Receipt Given.

1947. SEC. 2. No copy of any such volumes shall be taken from said Secretary's office until the person desiring the use of the same shall have deposited with said Secretary his written receipt therefor.

Return of Copies, When Made.

1948. SEC. 3. All copies of said reports so taken from said Secretary's office shall be returned thereto on or before the last day of any regular or special session of the legislature; and any person so failing to return said reports shall be liable for the value thereof, in any sum not less than ten dollars nor exceeding twenty-five dollars per volume, together with the costs of suit, to be recovered by suit, in the name of the State of Nevada, in any court of competent jurisdiction.

SEC. 4 obsolete.

An Act to regulate the sale of state law books.

Approved February 28, 1887, 93.

Sale and Price of Law Books.

1949. SECTION 1. The Secretary of State is directed to sell Nevada law books now in his possession, or that may hereafter come into his possession, at the following rates: Nevada Reports, two dollars a volume; Nevada and Sawyer's Digest (1878), one dollar a volume; General Statutes Nevada (1885), five dollars a volume; Statutes of Nevada, one dollar a volume during the two years immediately succeeding the date of publication, and at the expiration of two years, fifty cents a volume; *provided*, that nothing in this Act shall be construed so as to impair any contract now existing between the State of Nevada and any publishing company having a contract for publishing any of the books herein mentioned; *and, provided further*, that the Secretary of State is not authorized to sell at one time to any one person or firm, more than five copies of any one volume of said publications.

An Act to provide for the disposal and sale of duplicate copies of books in the state library.

Approved March 9, 1889, 94.

Librarian Authorized to Sell.

1950. SECTION 1. The State Librarian is hereby authorized and directed to sell, at such prices as he may be able to obtain, all duplicate copies of books now in the state library, as well as those that may hereafter become such, that may be set apart for that purpose by the Justices of the Supreme Court, or a majority thereof; *provided*, that whenever in the opinion of said Justices any such duplicate copies will be of service other than mere pecuniary value to the library of the state university, then books thus designated shall by said Librarian be reserved for such library and transferred thereto upon the application of the Board of Regents approved by said Justices.

An Act authorizing the Secretary of State to furnish the printed public documents, statutes, and reports to certain parties therein named.

Approved February 2, 1871, 50.

To Whom Delivered.

1951. SECTION 1. The Secretary of State is hereby authorized and directed to deliver to the United States Circuit Judge for the ninth circuit, and to each of the Judges of the United States District Courts for Nevada, California, and Oregon, and to the Librarian of the San Francisco law library, one full set of the reports of decisions of the Supreme Court of Nevada, and one full set of the legislative documents and statutes of Nevada, including such of the printed documents and statutes of the Territory of Nevada as may be in the state library for public distribution, and from time to time hereafter, as the same shall be published, to each of said Judges one copy of the supreme court reports and one copy of the legislative documents and statutes of the state, and to said Librarian two copies of each of said reports, documents, and statutes.

An Act to provide for the free distribution of the statutes and legislative journals of the present and future sessions of the Legislature of the State of Nevada to certain parties.

Approved February 7, 1883, 32.

Newspapers to Receive Statutes and Journals.

1952. SECTION 1. It is hereby made the duty of the Secretary of State to deliver, free of charge, the statutes of the present and each future session of the Legislature of the State of Nevada, together with the assembly and senate journals for the present and subsequent sessions of legislature, to the publisher of any daily or weekly newspaper published in said state, who constantly furnishes the same for the use of the state library.

An Act repealing all matters relating to copying into an appendix the annual reports of the state officers and other documents, and providing for the deposit of printed copies with the Secretary of State.

Approved March 7, 1879, 92.

SECTION 1 obsolete.

Printed Reports Filed.

1953. SEC. 2. In lieu of the written appendix heretofore required, printed copies of state officers' reports and other documents, shall be deposited with the Secretary of State, and it shall be his duty to properly file and preserve the same for future reference.

An Act to provide for clerical aid in the state library.

Approved March 15, 1895, 68.

Secretary of State to Appoint Library Clerk.

1954. SECTION 1. The Secretary of State shall have power to appoint a Clerk, to act as Librarian, at a salary of seven hundred and twenty dollars a year, commencing from the 8th day of January, A. D. 1895.

CONTROLLER.

An Act defining the duties of State Controller.

Approved February 24, 1866, 96.

Controller, How Commissioned.

1955. SECTION 1. The Controller shall be commissioned by the Governor, and shall keep his office at the seat of government. He shall not absent himself from the state for a longer period than ninety days, without leave of absence obtained from the legislature.

To Give Bond.

1956. SEC. 2. Before entering upon the duties of his office, he shall execute his official bond to the State of Nevada, with such sureties as shall be approved by the Governor, in the penal sum of fifteen thousand dollars, conditioned for the true and faithful performance of the duties enjoined by law, and for the safe delivery to his successor in office of all books, papers, documents, maps, vouchers, and other effects, belonging or appertaining to the office of Controller, or to the State of Nevada.

To Report Annually to the Governor.

1957. SEC. 3. He shall digest, prepare, and report to the Governor, on the first day of January, or within twenty-five days thereafter, annually, to be laid before the legislature at each regular session, a complete statement of the condition of the revenues, taxable funds, resources, incomes, and property of the state, and the amount of the expenditures for the preceding fiscal year; a full and detailed statement of the public debt; estimate of the revenues and expenditures for the succeeding fiscal year, specifying therein each object of expenditure, and distinguishing between each object of expenditure, and between such as are provided for by permanent or temporary appropriation, and such as require to be provided for by law. Also, a tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended; a tabular statement showing the amount of revenue chargeable to each county for the preceding year; the aggregate amount of each object of taxation, together with the tax due upon the same; and shall recommend such plans as he may deem expedient for the support of the public credit, for promoting frugality and economy in the public offices, for lessening the public expenses, and, generally, for the better management and more perfect understanding of the fiscal affairs of the state.

Controller to Keep Accounts and Receive Revenue.

1958. SEC. 4. He shall keep and state all accounts between the State of Nevada and the United States, or any state or territory, or any individual, corporation, or public officer of this state, indebted to the state, or intrusted with the collection, disbursement, or management of any moneys, funds or interests, arising therefrom, belonging to the state, of every character and description whatsoever, where the same are derivable from or payable into the state treasury. He shall examine and settle the accounts of all County Treasurers, and other collectors and receivers of all state revenues, taxes, tolls, and incomes, levied or collected by any Act of the legislature and payable into the state treasury, and

An Act to provide for the disposal and sale of duplicate copies of books in the state library.

Approved March 9, 1889, 94.

Librarian Authorized to Sell.

1950. SECTION 1. The State Librarian is hereby authorized and directed to sell, at such prices as he may be able to obtain, all duplicate copies of books now in the state library, as well as those that may hereafter become such, that may be set apart for that purpose by the Justices of the Supreme Court, or a majority thereof; *provided*, that whenever in the opinion of said Justices any such duplicate copies will be of service other than mere pecuniary value to the library of the state university, then books thus designated shall by said Librarian be reserved for such library and transferred thereto upon the application of the Board of Regents approved by said Justices.

An Act authorizing the Secretary of State to furnish the printed public documents, statutes, and reports to certain parties therein named.

Approved February 2, 1871, 50.

To Whom Delivered.

1951. SECTION 1. The Secretary of State is hereby authorized and directed to deliver to the United States Circuit Judge for the ninth circuit, and to each of the Judges of the United States District Courts for Nevada, California, and Oregon, and to the Librarian of the San Francisco law library, one full set of the reports of decisions of the Supreme Court of Nevada, and one full set of the legislative documents and statutes of Nevada, including such of the printed documents and statutes of the Territory of Nevada as may be in the state library for public distribution, and from time to time hereafter, as the same shall be published, to each of said Judges one copy of the supreme court reports and one copy of the legislative documents and statutes of the state, and to said Librarian two copies of each of said reports, documents, and statutes.

An Act to provide for the free distribution of the statutes and legislative journals of the present and future sessions of the Legislature of the State of Nevada to certain parties.

Approved February 7, 1888, 32.

Newspapers to Receive Statutes and Journals.

1952. SECTION 1. It is hereby made the duty of the Secretary of State to deliver, free of charge, the statutes of the present and each future session of the Legislature of the State of Nevada, together with the assembly and senate journals for the present and subsequent sessions of legislature, to the publisher of any daily or weekly newspaper published in said state, who constantly furnishes the same for the use of the state library.

An Act repealing all matters relating to copying into an appendix the annual reports of the state officers and other documents, and providing for the deposit of printed copies with the Secretary of State.

Approved March 7, 1879, 92.

SECTION 1 obsolete.

Printed Reports Filed.

1953. SEC. 2. In lieu of the written appendix heretofore required, printed copies of state officers' reports and other documents, shall be deposited with the Secretary of State, and it shall be his duty to properly file and preserve the same for future reference.

An Act to provide for clerical aid in the state library.

Approved March 15, 1895, 68.

Secretary of State to Appoint Library Clerk.

1954. SECTION 1. The Secretary of State shall have power to appoint a Clerk, to act as Librarian, at a salary of seven hundred and twenty dollars a year, commencing from the 8th day of January, A. D. 1895.

CONTROLLER.

An Act defining the duties of State Controller.

Approved February 24, 1866, 96.

Controller, How Commissioned.

1955. SECTION 1. The Controller shall be commissioned by the Governor, and shall keep his office at the seat of government. He shall not absent himself from the state for a longer period than ninety days, without leave of absence obtained from the legislature.

To Give Bond.

1956. SEC. 2. Before entering upon the duties of his office, he shall execute his official bond to the State of Nevada, with such sureties as shall be approved by the Governor, in the penal sum of fifteen thousand dollars, conditioned for the true and faithful performance of the duties enjoined by law, and for the safe delivery to his successor in office of all books, papers, documents, maps, vouchers, and other effects, belonging or appertaining to the office of Controller, or to the State of Nevada.

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certify the amount or balance to the State Treasurer. He shall keep fair, clear, distinct, and separate accounts of all the revenues and incomes of the state, and also, all the expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement, and investment.

Authorized to Audit and Allow Claims—May Examine Witnesses.

1959. SEC. 5. He shall audit all claims against the state, for the payment of which an appropriation has been made, but of which the amount has not been definitely fixed by law, and which shall have been examined and passed upon by the Board of Examiners, or which shall have been presented to said board, and not examined and passed upon by them within thirty days from their presentation; and he shall allow of said last mentioned claims (not passed upon by the Board of Examiners within said thirty days after presentation), the whole, or such portion thereof as he shall deem just and legal, and of claims examined and passed upon by the Board of Examiners, such an amount as he shall decree just and legal, not exceeding the amount allowed by said board. And no claim for services rendered or advances made to the state or any officer thereof, shall be audited or allowed unless such services or advancement shall have been specially authorized by law, and an appropriation made for its payment. For the purpose of satisfying himself of the justness and legality of any claim, he shall be allowed to examine witnesses under oath and to receive and consider documentary evidence in addition to that furnished him by the Board of Examiners. He shall draw warrants on the Treasurer for such amounts as he shall allow of claims of the character above described, and also for all claims of which the amount has been definitely fixed by law, and for the payment of which an appropriation shall have been made. *As amended, Stats. 1869, 158.*

CONSTITUTIONAL DUTIES OF CONTROLLER. The official name of "State Controller," as used in the constitution, implies recognized duties appurtenant thereto, and means a supervising officer of revenue—among whose duties is the final auditing and settling of all claims against the state. *Lewis v. Doron, 5 Nev. 399.*

CONCURRENCE OF EXAMINERS AND CONTROLLER. So far as the examination of claims against the state is concerned, the Board of Examiners assist the Controller, acting concurrently; but they do not deprive him of his constitutional power or any portion of it. Each moves in a designated sphere—all tending to the desired result: the protection of the revenues of the state. *Id.*

DUTY OF CONTROLLER. It is the duty of the State Controller to refuse to draw his warrant for any money that is to be used for unconstitutional purposes. *State v. Hallock, 16 Nev. 373.*

To Draw All Warrants.

1960. SEC. 6. He shall draw all warrants upon the treasury for money, and each warrant shall express, in the body thereof, the particular fund out of which the same is to be paid, and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet the same. The Controller shall keep an account of all warrants by him drawn on the treasury, and a separate account under the head of each specific appropriation, in such form and manner as at all times to show the unexpended balance of each appropriation.

To Direct the Prosecution of Suits.

1961. SEC. 7. He shall direct the Attorney-General to institute and prosecute in the name of the state, all proper suits for the recovery of any debts, moneys, or property of the state, or for the ascertainment of any right or liability concerning the same. He shall direct and superintend the collection of all moneys due to the state.

To State Accounts Against Persons Failing to Settle.

1962. SEC. 8. Whenever any officer, or other person or persons, or corporation, has received moneys belonging to the state, or has been intrusted with the collection, management or disbursement of any moneys, bonds, or interest, accru-

ing therefrom, belonging in a like manner to, or held in trust by, the state, and shall fail to render an account thereof to, and make settlement with the Controller, within the time prescribed by law, or where no particular time is prescribed, shall fail to render such account and make settlement, upon being required to do so by the Controller, within ten days after such requisition, the Controller shall state an account against such officer or person, charging twenty-five per cent damages, and interest at the rate of two per cent per month, from the time of failing to render an account and settle, as aforesaid.

THE PENALTY IMPOSED UNCONSTITUTIONAL. State v. Hoadley, 20 Nev. 317.

To Direct the Prosecution of Suits in Certain Cases.

1963. SEC. 9. Whenever any officer, or other person or persons, or corporation, shall be indebted to the state, and fail or refuse to make settlement with the Controller, as in this Act required, and shall fail to pay over to the Treasurer, on the printed or written order of the Controller, according to the provisions of this Act, the amount or balance to be paid by such officer, or other person or persons, or corporation, into the treasury, or to such person or persons entitled by law to receive the same, within the time prescribed by law, or if no time be prescribed by law, then within the time specified by such Controller, the Controller, upon being notified by such Treasurer, or otherwise, of such failure, shall direct the Attorney-General to institute suit for the recovery of the amount due and unpaid, with damages and interest thereon, against such officer, or other person or persons, or corporation.

Copy of Account Sufficient.

1964. SEC. 10. A copy of the account, in such case, made out and certified by the Controller, with his official seal affixed thereto, shall be sufficient evidence to support an action in any court of competent jurisdiction, for the amount or balance stated therein to be due, without proof of the signature or official character of such Controller, subject, however, to the right of the defendant to plead and give in evidence, as in other actions, all such matters as shall be legal and proper for his defense or discharge.

Party Subject to Costs, When.

1965. SEC. 11. The party thus sued shall be subject to the costs and charges of suit, whether the ultimate decision be against him or in his favor, except in cases in which he shall have rendered a true account, and shall also have paid the full amount to the proper person authorized by law to receive the same, before the commencement of said suit, or where the suit is brought to recover against a deceased debtor to the state, before the expiration of the time prescribed by law, within which representatives are allowed by law to administer upon estates.

Person Subject to Costs, When.

1966. SEC. 12. If any defendant in any suit prosecuted at the instance of the Controller, under the provisions of this Act, shall, at the trial, give any evidence which existed prior to the time, and within the knowledge of the defendant at the time of such adjustment and settlement of his accounts, and which was not produced to said Controller at the time of said settlement, such defendant shall be subject to the costs and charges of said suit, whether the ultimate decision be against him or in his favor.

Duty to Keep and Preserve Books, Records, etc.

1967. SEC. 13. It shall be the duty of the Controller to keep and preserve all public books, records, papers, documents, vouchers, and all conveyances, leases, mortgages, bonds, and all securities for debts, moneys, or property, and accounts and property of any description belonging or appertaining to his office, and also to the state, where no other provision is made by law for the safe keeping of the same.

To Give Information to Legislature.

1968. SEC. 14. He shall give information to either house of the legislature,

whenever required, upon any subject relating to the fiscal affairs of the state, or touching any duty of his office; and shall perform all such other duties, not enumerated in this Act, as may be required by law.

Books, Papers, etc., to Be Open to Inspection.

1969. SEC. 15. All the books, papers, files, letters, and transactions, pertaining to the office of Controller, shall be open to the inspection of the Governor, to the inspection of committees and members of the legislature, or either branch thereof, or that of any other person authorized by law.

OFFICE OF STATE CONTROLLER. The office of State Controller is one of public trust, and is conferred upon the individual for the benefit of the public. *Drake v. Hobart*, 12 Nev. 408.

MANDAMUS WILL ISSUE to compel Controller to perform acts required by law. *Id.*

Vacancy, How Filled.

1970. SEC. 16. In case of the death, absence from the state for a period longer than ninety days without leave, removal from office, or impeachment of the Controller, the Governor shall make an appointment of some suitable person to perform the duties of the office of Controller for the remainder of the term for which the Controller was elected; and such person shall take the oath and give the bond required of the Controller, and shall receive the same compensation as is by law allowed to the Controller, in proportion to the time he shall be employed in such service.

Willful Neglect of Duty a Misdemeanor.

1971. SEC. 17. If the Controller shall willfully neglect or refuse to perform any duty enjoined by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of a misdemeanor in office.

Seal of Office.

1972. SEC. 18. The Secretary of State shall procure and deliver to the Controller a seal of office, with some suitable device, and having engraved around the margin thereof the words "Controller's Office of the State of Nevada," an impression of which seal shall be retained in the office of the Secretary of State as a record. Said seal shall be used for the authentication of all drafts and warrants drawn by the Controller, and of all copies of papers issued from his office.

Controller to Keep Accounts With All Debtors of the State.

1973. SEC. 19. The Controller shall charge and enter in a proper book or books, to be provided for that purpose, under distinct heads for each debtor, or disburser, or holder of public moneys, or dues to the state, of all and every description whatever, with a suitable index arranged in alphabetical order, of all such persons, corporations, states, or the United States, as soon as such liabilities or indebtedness shall come officially to his knowledge, charging such officer, person, or persons, corporations, states, or the United States, with the amount or amounts of such liabilities, stating whether such dues be in money, property, or securities of any kind; and particularly of all collectors of the public revenues of the state, and all dues to the state, whether money, property, securities, or other things, from any and all sources whatever, as soon as the same is due by law; or if no time be stipulated or fixed by law, then as soon after twenty days' notice as said Controller shall require the same to be paid, said Controller shall audit and state and require payment thereof; and if not paid, to proceed as directed by this Act, by suit, for the collection of the same.

Settlement and Payment of Accounts.

1974. SEC. 20. Whenever any such debtor or debtors to the state have any such dues to the state ready to pay over, it shall be the duty of such debtor or debtors to call on the Controller for settlement of his or their account; and, after such settlement, it shall be the duty of the Controller to issue his written or printed order, beginning with the number one and running in numerical order

until the end of the fiscal year, and directed to the Treasurer, to receive from such person making such payment, stating in such written or printed order the amount of money to be paid, in such form as he may prescribe, and hand said written or printed order to said debtor or person offering to pay money, who shall take the same to the Treasurer, and pay over to him the amount specified in said written or printed order, and take from the Treasurer a receipt for the said amount; and on delivery of said receipt to the Controller, it shall be his duty to give to said debtor a discharge for the said amount; and the Controller shall immediately charge the Treasurer with the same, and in no case shall a discharge be granted to any debtor but on the delivery to the Controller of the Treasurer's receipt, predicated on a previous and corresponding written or printed order, to pay such amount into the treasury, in the manner prescribed in this Act.

To Keep Account With Treasurer.

1975. SEC. 21. It shall be the duty of the Controller to open and keep, in a suitable book or books, to be provided for that purpose, an account with the Treasurer, charging him in the manner hereinbefore prescribed, with all the moneys for which the Treasurer may grant receipts, and with no other.

How Money Drawn from the Treasury.

1976. SEC. 22. Whenever any person is entitled to draw or to receive any money from the treasury, the Controller shall draw a warrant in his favor on the Treasurer, and deliver the same to the person entitled thereto, taking his receipt for the same, in a book of receipts to be provided for that purpose, numbering the receipt the same as the warrant, and shall give the Treasurer credit for all such warrants, in the order in which he issues the same, in such manner as to show the date thereof, in whose favor it was drawn, the nature of the claim upon which it is founded, with a reference to the law under which it is drawn.

Duty Respecting Orders on the Treasury, and Receipts.

1977. SEC. 23. It shall be the duty of the Controller to number all the written or printed orders he issues to the Treasurer to receive money, beginning with number one at the beginning of each fiscal year, and running in numerical order until the end of the fiscal year. The present fractional year to constitute the first fiscal year. It shall likewise be the duty of the Controller to see, before filing the Treasurer's receipt, that they are numbered with the corresponding numbers of the written or printed order on which the receipt was predicated, and to number on the back of each receipt the number thereof, and for what fiscal year, and carefully file away and preserve the same.

To Furnish Assessors With Blank Books.

1978. SEC. 24. It shall be the duty of the Controller to provide suitable forms of blanks and books, and furnish the Assessors and Collectors of each county with the same, in such form and manner as will best effect the object of the statutes providing for the assessment and collection of the public revenues of the state.

Office Hours.

1979. SEC. 25. The office of Controller shall be open for the transaction of business from ten o'clock a. m. till four o'clock p. m. of every day of the year, Sundays and public holidays excepted.

GENERAL APPROPRIATION ACT CONSTRUED—DUTY OF CONTROLLER. Wilkins v. Halleck, 20 Nev. 73.

An Act to provide for the appointment of a Deputy State Controller, and to fix his compensation.

Approved February 21, 1865, 164.

Controller Authorized to Appoint Deputy.

1980. SECTION 1. The Controller of State is hereby authorized to appoint a

deputy, who shall have power, in the absence of the Controller, to do all acts devolving upon, and now necessary to be performed by the Controller, except the signing of state warrants and bonds.

Sec. 2 (salary) superseded.

An Act authorizing the canceling of old unpaid warrants.

Approved March 7, 1873, 179.

When Canceled.

1981. SECTION 1. After the expiration of three years from the date of issuance by the State Controller, all warrants that have been, or may hereafter be issued, if not presented to and paid by the Treasurer on or before the expiration of three years from the issuance thereof, whether outstanding or remaining in the office of the Controller, uncalled for, shall become void; *provided, however*, that the person or persons in whose favor such warrant or warrants may have been drawn shall be permitted to renew his, her, or their claim against the state to the amount of such warrant or warrants canceled, by the presentation of the same to any succeeding legislature, to be acted upon in the same manner as deficiency claims.

Canceled Warrants Filed and Certified to Treasurer.

1982. SEC. 2. The State Controller is hereby authorized and directed to cancel and file as vouchers all such warrants as he may find remaining in his office uncalled for. He shall, at the time of canceling such warrants, make a note to that effect upon the margin of his warrant register, opposite where such warrant or warrants are registered; and warrants that are still outstanding, and which become void under this Act, he shall note the same upon the margin of his warrant register as above, giving the date such warrant or warrants become void. He shall at the time that such warrants become void, certify the same to the State Treasurer, who shall thereupon make similar notes upon the margin of his warrant register, and he shall thereafter refuse to pay such warrants if presented.

Treasurer to Transfer Funds—Renewed Claims, How Paid.

1983. SEC. 3. Whenever the Controller shall certify to the Treasurer, as directed in section two of this Act, he shall at the same time direct the Treasurer to transfer from the fund or funds upon which such warrant or warrants were drawn to the general fund an amount equivalent to such warrant or warrants, as the case may be; and whenever said person or persons in favor of whom such warrant or warrants were drawn shall renew his, her, or their claim against the state, the same shall be paid out of the general fund.

STATE TREASURER.

An Act defining the duties of State Treasurer.

Approved February 2, 1868, 57.

Office at Seat of Government.

1984. SECTION 1. The Treasurer shall keep his office at the seat of government, and not absent himself from the state for more than ninety days at any one time, without leave of absence from the legislature. *As amended, Stats. 1867, 113.*

Commission and Qualification.

1985. SEC. 2. He shall be commissioned by the Governor; but before such commission shall issue, and before entering upon the duties of his office, he shall take the oath of office prescribed by law, to be indorsed upon his commission, and shall execute and deliver to the Governor a bond, payable to the state, in the sum of one hundred thousand dollars, with sureties, to be approved by the Board of Examiners, conditioned for the faithful performance of all the duties which may

be required of him by law, and for the delivery to his successor in office of all books, papers, moneys, vouchers, sureties, evidences of debt, and effects belonging to his said office.

State v. Rhoades, 6 Nev. 352; State v. Rhoades, 7 Nev. 434.

Official Seal of Treasurer.

1986. SEC. 3. The Secretary of State shall procure and deliver to the Treasurer a seal of office, with some suitable device, and having engraved around the margin thereof the words, "Office of the Treasurer—Nevada"; a description of which seal shall be retained in the office of the Secretary of State as a record. Said seal shall be used to authenticate all writings, papers, and documents certified from such office. Until such seal is procured, the Treasurer is authorized to use his own private seal.

Duties of State Treasurer.

1987. SEC. 4. He shall receive and keep all moneys of the state not expressly required by law to be received and kept by some other person; shall receipt to the Controller for all moneys received, from whatever source, and at the time of receiving the same; shall disburse the public moneys upon warrants drawn upon the treasury by the Controller of State, and not otherwise. Such warrants shall be registered, and paid in the order of their registry. He shall keep a just, true and comprehensive account of all moneys received and disbursed, and shall deliver to his successor in office all moneys, records, books and papers and other things belonging to his office in good order; and keep his office open, for the transaction of business, every day of the year, Sundays and other non-judicial days excepted. *As amended, Stats. 1897, 24.*

Annual Report.

1988. SEC. 5. He shall deliver to the Governor, on the first day of January, or within ten days thereafter, annually, a full exhibit of all moneys received by him into and paid out of the treasury, showing, under separate and appropriate heads, on what account and from what sources received, and for what particular object or service the same has been paid out by him; and shall give information, in writing, to either house of the legislature, whenever required, upon any subject connected with the treasury or any duty of his office.

Books to Be Open to Inspection—Report to Controller.

1989. SEC. 6. The books, papers, and transactions of his office shall be open at all times for the inspection of the Governor, Controller, Board of Examiners, of either house of the legislature, or of any committee thereof, or person authorized by law. He shall report to the Controller of State, on or before the tenth of each month, the complete operations of the treasury for the preceding month, specifying the amount received and from what sources; the amounts expended in the redemption of bonds, warrants, coupons for interest, etc., and the balance of cash on hand in the treasury to the credit of the various funds. For any failure (except it be unavoidable) to comply with the provisions of this section, the Treasurer shall forfeit his office, and it shall be the duty of the Governor to declare the same vacant, and appoint a successor. *As amended, Stats. 1873, 175.*

Prohibited from Using Moneys.

1990. SEC. 7. The Treasurer is hereby made responsible, upon his official bond, for all moneys received by him belonging to the state, and is hereby prohibited from using or loaning or borrowing the same, for any purpose whatever, except as provided by law.

Willful Neglect of Duty a Misdemeanor.

1991. SEC. 8. If the Treasurer shall willfully neglect or refuse to perform any duty enjoined by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is authorized by law, he shall be deemed guilty of misdemeanor in office.

Vacancy, How Filled.

1992. SEC. 9. In case of the death, impeachment, absence, or disability of the Treasurer, the Governor shall make an appointment of some suitable person to perform the duties of the office until a successor shall be elected and qualified, or until such absence or disability shall cease; and such person shall take the oath of office and execute the bond required of the Treasurer, and shall receive the same compensation as is allowed by law to the Treasurer, in proportion to the time he shall be engaged in such service.

May Administer Oaths.

1993. SEC. 10. The Treasurer shall have power to administer all oaths or affirmations required or allowed by law, in matters touching the duties of his office, and shall perform all duties, not enumerated in this Act, which may be enjoined by law.

SEC. 11 (salary) superseded, Sec. 2092.

An Act supplementary to an Act entitled "An Act defining the duties of the State Treasurer," approved February second, eighteen hundred and sixty-six.

Approved March 1, 1869, 101.

Treasurer's Duty in Paying Warrants.

1994. SECTION 1. The State Treasurer shall pay all warrants drawn upon him by the State Controller, out of the proper fund, as directed, in the order in which the same are presented. If there be no money to pay any warrant when presented, the State Treasurer shall indorse thereon the words "not paid for want of funds," and shall note the date of presentation, and attest the indorsement made by his official signature. He shall at the same time make an entry of the date of presentation, number, and amount of the warrant in the register required by law to be kept by him. So soon as money accumulates or is received into the state treasury, applicable to and sufficient for the payment of any outstanding warrant or warrants so presented for payment and not paid for want of funds, the State Treasurer shall post a notice in writing in a conspicuous place in his office, setting forth the number and amount of his warrant or warrants, and the fact that there is money in the state treasury to pay the same. From the time of the posting of such notice no interest shall be allowed or paid upon any warrant which by law is or may be entitled to bear interest.

Liability to Damages on Failure to Pay When Money in Treasury.

1995. SEC. 2. Any failure, neglect, or refusal on the part of the State Treasurer to pay any warrant when presented, there being money in the state treasury to pay the same, or to post the notice within five days, as required in this Act, after there shall have been received into the state treasury money applicable and sufficient to pay any warrant or warrants presented and not paid for want of funds, or after having received the money and posted the notice as aforesaid on presentation for payment, to pay the warrants so posted, shall subject him to damages to the person or persons aggrieved to an amount equal to treble interest on the sum specified in the warrant or warrants not paid on presentation, as provided in this section, such interest being computed at the rate of three per cent per month during the time such warrant or warrants remain unpaid, and in any suit brought to recover the same, judgment shall be rendered to cover the damages at the time of the entry thereof and for costs.

Public Moneys, How Kept—Treasurer Not to Use Same.

1996. SEC. 3. The State Treasurer shall securely keep in the safe and vault provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds, and securities of the state appertaining to his office, and shall not deposit any part or portion of the same with any individual, copartnership, or corporation; nor shall he use said money, or any part thereof, or allow

any one else to do so, except in the payment of bonds, or coupons, or warrants properly drawn upon him by the State Controller. *As amended, Stats. 1869, 139; 1873, 171.*

An Act to amend an Act entitled "An Act to authorize the State Treasurer to employ a clerk, and fixing his compensation," approved March ninth, eighteen hundred and sixty-five.

Approved March 1, 1866, 184.

Deputy Treasurer.

1997. SECTION 1. The State Treasurer is hereby authorized to employ a deputy, whose compensation shall be two hundred and fifty dollars per month. *As amended, Stats. 1873, 59.*

For compensation of Deputy Treasurer, see Sec. 2102.

Controller to Draw Warrant Monthly.

1998. SEC. 2. The Controller of State shall, at the end of each month, draw his warrant upon the state treasury in favor of such deputy for the amount of his compensation then due, and the State Treasurer shall pay the same out of any moneys in the state treasury not otherwise specially appropriated. *As amended, Stats. 1873, 59.*

ATTORNEY-GENERAL.

An Act defining the duties of the Attorney-General of the State of Nevada.

Approved March 11, 1867, 106.

Residence and Office of Attorney-General.

1999. SECTION 1. The Attorney-General shall reside and keep his office at the seat of government, and shall not absent himself from the state exceeding sixty consecutive days without leave of absence from the legislature. He shall be commissioned by the Governor, and shall take the oath prescribed by the constitution, and shall give bond with security, to be approved by the Board of State Examiners, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office.

To Prosecute and Defend Certain Causes—To Account for Moneys.

2000. SEC. 2. The Attorney-General shall attend each of the terms of the supreme court, and there prosecute or defend, as the case may be, on the part of the state, all causes to which the state may be a party; also, all causes to which any officer of the state, in his official capacity, may be a party; also, all causes to which any county may be a party, other than those in which the interest of the county may be adverse to the state, or any officer of the state, acting in his official capacity; and, after judgment obtained in any such cause, he shall direct such proceedings, and sue out such process as may be required to carry the same into execution. He shall account for and pay over to the proper officer, without delay, all moneys which may come into his hands belonging to the state or any county. It shall be his duty to assist in all impeachments which may be tried before the senate.

To Give Written Opinions to Certain Officers.

2001. SEC. 3. When required, the Attorney-General shall give his opinion, in writing, upon any question of law, to the Governor, the Secretary of State, Controller, Treasurer, Surveyor-General, the Trustees, Commissioners, or Warden of state prison, hospital, or asylum, or the officers of any state institution whatever, and to any District Attorney, upon any question of law relating to their respective offices; and for no duty required of him by law shall he be entitled to receive any fee whatever.

To Keep Docket of Causes.

2002. SEC. 4. The Attorney-General shall keep a docket of all causes to

which the state, or any officer of the state, in his official capacity, or any county, may be a party; which docket shall at all times, in business hours, be open to the inspection of the public, and shall set forth the county, district, and court in which said causes shall have been instituted, tried, and adjudged, and whether civil or criminal causes; if civil causes, the nature of the demand, the stage of the proceedings, and when prosecuted to judgment, a memorandum of the judgment, of the process, if any issued thereon, and whether satisfied or not, and if not satisfied, the return of the Sheriff or other officer on said process; and if criminal causes, the nature of the crime, the mode of prosecution, the style of the proceedings, and when prosecuted to sentence, a memorandum of the sentence.

To Report Annually to the Governor.

2003. SEC. 5. The Attorney-General shall, also, on the first day of January, annually, report to the Governor the condition of the affairs of his department, and in such report make such suggestions as shall appear to him calculated to improve the laws of the state. He shall communicate to the Governor, or either branch of the legislature, when requested, any information concerning his office.

To Assist District Attorneys in Certain Cases.

2004. SEC. 6. Whenever the Governor shall direct, or in the opinion of the Attorney-General, to protect and secure the interest of the state, it is necessary that a suit be commenced or defended in any court, it is hereby made the duty of the Attorney-General to commence such action, or make such defense; and such actions may be instituted in any district court in the state, or in any justice's court of the proper county.

ATTORNEY-GENERAL AUTHORIZED TO BRING SUIT IN THE NAME OF THE STATE. Under the provisions of the statute the Attorney-General is authorized to bring a suit for the collection of taxes due the state. *State v. C. P. R. R. Co.*, 10 Nev. 47.

Tax Suits. Attorney-General has entire control of all tax suits in the supreme court on the part of the state. *State v. Cal. M. Co.*, 13 Nev. 203.

Refusal to Perform Duty a Misdemeanor.

2005. SEC. 7. If the Attorney-General shall neglect or refuse to perform any of the duties required of him by law, he shall be deemed guilty of misdemeanor, or shall be subject to removal from office; and he shall be responsible upon his official bond for all carelessness, negligence, or malfeasance in office.

Sec. 8 superseded, Sec. 2002.

SURVEYOR-GENERAL.

An Act concerning the office of Surveyor-General.

Approved March 20, 1865, 411.

Power to Appoint Deputy.

2006. SECTION 1. The Surveyor-General shall have power to appoint a deputy or deputies when necessary, who shall take and subscribe the official oath; and the survey of any deputy shall be equally valid as if made by the Surveyor-General.

To Make Surveys.

2007. SEC. 2. When required by law, the Surveyor-General shall make an accurate and complete survey, by astronomical observations and linear surveys, of the boundaries of the state, as declared by the constitution, or as may hereafter be determined by the Congress of the United States, or the people of this state.

To Make Map of the State—To Run Boundary Line Between Counties.

2008. SEC. 3. When required by law, he shall make an accurate map of the state, and shall survey, and, when necessary, designate by plain, visible marks or monuments, and shall describe on the map of the state the boundary lines of the

several counties and incorporated cities and towns in the state; and when a boundary line of the state, or of any county, intersects with, or passes in the immediate vicinity of any lake, stream, range of hills or mountains, or other conspicuous object on the surface of the earth, he shall, by the proper observation, determine the place of such intersection, or the distance and bearing from said boundary line of such point of such object as may be nearest to said boundary line, and will best serve as a distinguishing landmark. He shall also determine and describe on the map of the state the length and course of every important stream and lake, and of every important range of hills or mountains, and the greatest elevation or highest peak thereof, within the limits of any county; when called upon by the County Commissioners of any county, he shall run any boundary line, or portion of a line, between such county and an adjoining county.

To Preserve and Deliver Books to Successor.

2009. SEC. 4. The Surveyor-General shall preserve in his office, and deliver to his successor, all books, maps, plans, drawings, levels, surveys, and field notes, in any way pertaining to his official duties, and shall deliver as aforesaid all instruments and other things belonging to his office.

Chief Engineer and Commissioner of Internal Improvements.

2010. SEC. 5. The Surveyor-General shall be Chief Engineer and Commissioner of Internal Improvements. He shall deliver to the Governor annually, on or before the fifteenth day of December, his report, which shall contain: First—An accurate statement of the progress he may have made in the execution of the surveys enjoined on him by law, and in the preparation of the map of the state. Second—Plans and suggestions for the construction and improvement of roads, turnpikes, railroads, canals, and aqueducts; also, plans and suggestions for the preservation and increase of forest and timber trees, for the draining of marshes, prevention of overflows, and the irrigation of arable lands by means of reservoirs, canals, artesian wells, or otherwise. Third—An estimate of the aggregate quantity of land belonging to the state, and the best information he may be able to obtain as to the characteristics of the same. Fourth—An estimate of the aggregate quality of all lands used for or adapted to tillage and grazing within this state, and each county of the state, together with a description of the locations in which the same may be situated. Fifth—An estimate of the aggregate number of horses, cattle, sheep, and swine within the state, and each county of the state. Sixth—An estimate of the aggregate quantity of wheat, rye, maize, potatoes, grapes, and other agricultural productions of the preceding year. Seventh—An estimate of the aggregate quantity of all mineral lands in the state, and the quantity and value of each mineral produced during the preceding year, together with a description of the localities in which such minerals may be found. Eighth—All facts which may be within his personal knowledge, or which he may learn from reliable sources, and which may, in his opinion, be calculated to promote the full development of the resources of the state.

To Obtain Quarterly Reports from County Surveyors and Assessors.

2011. SEC. 6. He shall address a circular letter to the County Surveyors and County Assessors, instructing them, and it is hereby made a part of their official duties, to use their utmost diligence in collecting information relative to each and every matter mentioned in section five of this Act, and to transmit to him quarterly, at the seat of government, a report, in writing, setting forth the result of their inquiries; and it is hereby made the duty of the County Commissioners to refuse to audit or pay any bills for services of the County Surveyor or County Assessor, in case they shall have failed to comply with the requirements of this Act. It shall also be the duty of the County Surveyors to transmit, when required, to the Surveyor-General, a copy of the field notes and plats of official surveys made by them (except surveys of city or town lots), expressing the bear-

ings from the true meridian, and noting the variations of the magnet from the true meridian, and indicating plainly upon the plat at what point of any river, stream, or county line, or any line of the United States surveys, or any road, canal, or railroad, may be touched or crossed; also, indicating the position of any mountain or other prominent landmark within or near the lines of the survey.

Duty of Railroad and Toll Road Companies.

2012. SEC. 7. It shall be the duty of all railroad and toll road companies to file in the office of the Surveyor-General complete topographical maps of the roads and the country through which their roads may run.

Appropriation for Expenditure.

2013. SEC. 8. He shall perform all such other and further duties as may be prescribed to him by law, and appropriations may be made from time to time for the necessary expenditures of his office.

An Act to provide for paying the cost of printing and stationery required in the state land office.

Approved March 5, 1897, 38.

Itemized Statement.

2014. SECTION 1. It is hereby made the duty of the State Printer to keep an accurate account of the cost of all labor employed and material used in performing work for the state land office and to render an itemized statement of the same to the State Land Register on the first day of each and every month.

Land Register to Examine Statement.

2015. SEC. 2. The State Land Register shall examine and certify to the correctness of such statement and shall transmit the same to the Clerk of the State Board of Examiners.

Duty of Board of Examiners.

2016. SEC. 3. The State Board of Examiners shall treat such statement in the same manner as a claim against the state, and shall approve the same for such sum as they may find correct.

To Transfer Amounts.

2017. SEC. 4. The State Controller and the State Treasurer are hereby authorized and directed to transfer the amounts so allowed from the state school fund to the general fund of the state.

BOARD OF EXAMINERS.

An Act relating to the Board of Examiners, to define their duties and powers, and to impose certain duties on the Controller and Treasurer.

Approved February 7, 1865, 135.

Duty of Board of Examiners in Relation to Treasury.

2018. SECTION 1. It shall be the duty of the Board of Examiners, consisting of the Governor, Secretary of State, and Attorney-General, as often as it may be deemed proper, to examine the books of the Controller and Treasurer, the accounts and vouchers in their office, and to count the money in the treasury; and for the purpose of discharging the duties imposed on it by this Act, the said board is authorized to demand, and the Controller and Treasurer are hereby required to furnish the said board, without delay, such information as it may demand, touching the books, papers, vouchers, or matters pertaining to or cognizable in their offices respectively; *provided*, that the counting of the moneys in the treasury shall take place at least once a month, without the said board giving the Treasurer any previous notice of the hour or day of the said counting.

Board to File Affidavit and Publish.

2019. SEC. 2. Said board shall, at least once in each month, file an affidavit in the office of the Secretary of State, showing the actual amount of money in the treasury at their last counting prior thereto, and shall cause a copy of said affidavit to be published in one daily newspaper published at the capital; *provided*, that if no daily newspaper be published at the capital, then such affidavit to be published in such other daily newspaper as shall be designated by the board.

Controller and Treasurer Required to Permit Examination.

2020. SEC. 3. It shall be the duty of the Controller and Treasurer to permit the said Board of Examiners to examine the books and papers of their respective offices, and of the Treasurer to permit the money in the treasury to be counted whenever the said board may wish to make said examination or counting, without delaying said examination or counting on any pretense whatever.

SEC. 4 repealed, Stats. 1869, 116.

When No Appropriation Has Been Made to Pay Claim.

2021. SEC. 5. It shall be the duty of the Board of Examiners to examine into all claims against the state, presented to them by petition, for which no appropriation has been made, and which require to be acted upon by the legislature, and to take all evidence in regard to the same which may be offered by the claimant, or deemed proper by the board. The evidence shall be reduced to writing, and, together with the petition, shall be transmitted to the legislature on the first day of its next session, together with the opinions of the board in reference to the merits of the same. *As amended, Stats. 1869, 116.*

FUNCTIONS OF BOARD OF EXAMINERS. The institution of the Board of Examiners was not intended as a check on legislative extravagance, but to secure, as a prerequisite to legislative action, an examination of such claims as require such action upon them as claims—not creative action, but adoptive or rejective action. *Ash v. Parkinson, 5 Nev. 16.*

EXAMINING POWERS ONLY ADVISORY TO THE LEGISLATURE. The examining powers of the Board of Examiners and of the Controller are, with reference to the legislature, only advisory. *Lewis v. Doron, 5 Nev. 399; Cutting v. LaGrave, 23 Nev. 387.*

Duty Where Appropriation Has Been Made—When Controller Not to Draw Warrant.

2022. SEC. 6. All claims against the state for services or advances, for payment of which an appropriation has been made by law, and which have been by law authorized, but of which the amount has not been liquidated and fixed, may be presented to the Board of Examiners in the form of an account or petition, and in such manner as said board shall prescribe by their rules, the claimant may present his evidence to sustain said demand, which evidence, if oral, shall be reduced to writing, and they shall either reject or allow the claim, in whole or in part, within thirty days from its presentation, and shall indorse upon the same, if allowed in whole or in part, over their signatures: "Approved for the sum of ----- dollars," and shall immediately transmit the same so indorsed, together with all the evidence received by them relating thereto, to the Controller of State. The Controller shall not allow or draw his warrant for any claim of the class described in this section, which shall not have been approved by said board, or a greater amount than allowed by said board, except when said claim shall not have been acted upon by said board within thirty days prior to its presentation. *As amended, Stats. 1869, 116.*

SEC. 7 repealed, Stats. 1869, 116.

Chairman to Issue Process.

2023. SEC. 8. The Governor of this state (and the Secretary of State in his absence) shall act as Chairman of the Board of Examiners, and, as said Chairman, have power to issue subpoenas, and compel the attendance of witness before said board, in the same manner that any court in this state can compel the attendance of witness before it; and whenever, in the opinion of said board, the

testimony of any witness against a demand pending before them is material, it shall be the duty of said Chairman to cause the attendance of said witness before said board to testify concerning said demand, and said board are hereby authorized to make such witness a reasonable allowance for such attendance, not exceeding the fees of witnesses in civil cases, which shall be paid from the contingent fund allowed said board, but in no instance shall an allowance be made in favor of a witness who testifies in behalf of a claimant.

May Establish Rules.

2024. SEC. 9. The said board shall have authority to establish rules and regulations for its government, not inconsistent with the provisions of this Act, and each member thereof is hereby authorized to administer an oath or affirmation to any person or persons concerning any matter before said board, or intended to be brought before it, and each member of said board is hereby authorized to take the deposition or depositions of any witness or witnesses, to be used before said board in any matter pending before it.

Penalty for Perjury.

2025. SEC. 10. If any person shall knowingly and willfully swear falsely before said board, or any member thereof, in a matter pending before said board, at the time of taking said oath, or in a matter to be submitted to said board, such person shall be deemed guilty of perjury, and on conviction thereof shall be subjected to the same pains, penalties, and disabilities which are now, or shall be hereafter prescribed by law for willful and corrupt perjury.

Semi-Monthly Sessions.

2026. SEC. 11. The board shall hold sessions for the transaction of business at least twice in each month, and shall cause a record of their proceedings to be kept, and any member thereof may cause his dissent to the action of the majority upon a matter brought before it to be entered upon said record.

Quorum.

2027. SEC. 12. A majority of said board shall constitute a quorum, and may as such discharge any of the duties specified in this Act.

An Act to provide for the purchase of certain supplies for state officers and attaches of the legislature.

Approved March 2, 1877, 115.

Furnishing Board.

2028. SECTION 1. The State Board of Examiners is hereby constituted ex officio a furnishing board, with the powers and duties hereinafter specified.

Board to Advertise—Lowest Bidder—Bonds—All Bids May Be Declined—May Buy in Open Market.

2029. SEC. 2. It shall be the duty of said board, as often as it shall become necessary, to advertise, for thirty days, in one daily newspaper published in Virginia City, one daily newspaper published in Carson City, one daily newspaper published in Reno, Nevada, and one daily newspaper published in San Francisco, California, for sealed proposals to furnish stationery, blank books, and such other articles necessary for the use of said state and legislative officers as are entitled thereto, or any of them; and said board shall specify in said advertisement the amount and kinds of each article desired, samples or minute descriptions of which shall accompany and be deposited with the sealed proposals for furnishing the same, in the office of the Secretary of State; and all proposals received, as aforesaid, shall be opened and compared by said board, any two of whom shall constitute a quorum, at the Secretary of State's office, at twelve o'clock m. of the day specified in said advertisement; and the said board shall then and there award the contract for furnishing said supplies, or any of them to the lowest bidder, whose sealed bid shall be accompanied by a bond, with two or more sureties.

in the sum of \$-----, the sum to be not less than twice the amount of the value of the articles to be supplied, payable to the people of the State of Nevada, conditioned that if the bidder shall receive the award of said contract he will, in twenty days thereafter, deliver the supplies or articles for which he has been awarded the contract; *provided*, that in their said advertisement said board may classify said supplies and articles, and may receive bids and award contracts for such separate articles or class of supplies as they shall deem the lowest and best; *provided further*, that said board may require any class or articles of said supplies to be delivered in installments; *provided further*, that any and all bids which shall be deemed too high by said board may be declined, in which case said board shall again advertise for sealed proposals to furnish the classes or articles of supply so declined, and so on for the same cause, as often as it shall occur; *and, provided further*, that in such case said board may purchase any articles or supplies for which bids have been rejected as aforesaid, in open market, and in amounts sufficient for immediate necessities, but at prices not exceeding the lowest prices in the bids rejected.

Duties of Secretary of State.

2030. SEC. 3. It shall be the duty of the Secretary of State, immediately after the passage of this Act, to take a full and complete inventory of all stationery, blank books, and other articles and supplies aforesaid, then on hand, and enter the same in a set of books to be kept for that purpose, making a separate account for each class of articles; and in like manner he shall enter in said books a detailed and classified account of all purchases of articles and supplies authorized by this Act, showing the amount and cost of each article and class of supplies purchased, the amount and cost of each class issued, amount and cost of each article and class issued to each state officer and attache of the legislature, and amount and cost of each article and class on hand. He shall issue the supplies aforesaid only upon the requisition of the proper officer, and shall take a receipt for the same upon delivery, which requisition and receipt shall be filed and preserved in his office.

Secretary of State to Take Inventory.

2031. SEC. 4. It shall be the duty of said board, at the end of each fiscal year and such other times as they shall deem necessary, to require the Secretary of State to take an inventory of all the articles and classes of said supplies on hand and contracted for, and to make an examination of the amounts and vouchers appertaining to the same. *As amended, Stats. 1889, 81.*

Legislative Stationery.

2032. SEC. 5. It shall be the duty of said board, at least one month prior to the assembling of each legislature, to advertise in accordance with section two of this Act, for a supply of stationery and such other articles as shall be sufficient for the use of the state officers and attaches of the legislature, or necessary for the public service, and at the commencement of each session said board shall report to the legislature a full account of their receipts and expenditures and stock of supplies on hand.

Expenses of Board—No Salary.

2033. SEC. 6. The actual expenses incurred by said board in executing the powers and discharging the duties prescribed and imposed in this Act, when certified by them, shall be audited by the Controller, and paid by the Treasurer out of any money which shall have been appropriated for that purpose; *provided*, nothing in this Act shall be construed as allowing salary or compensation to said furnishing board for any services performed under the provisions of this Act.

Stationery, How Issued to Legislature.

2034. SEC. 7. It shall be the duty of the Secretary of the Senate and Chief Clerk of the Assembly, as often as it shall become necessary, to make requisition

tions upon the Secretary of State for such stationery, etc., as they shall deem necessary for the use of the legislature and all committees of the same, and for which, upon delivery, they shall give their receipts to the Secretary of State. And it shall be the duty of the Secretary of the Senate and Chief Clerk of the Assembly, to issue all stationery to the several officers of their respective houses as are entitled thereto, taking their receipts for the same.

Surplus Returned.

2035. SEC. 8. At the close of each session of the legislature hereafter, it shall be the duty of each attache of the legislature drawing supplies as above provided, to return to the officer from whom such supplies were drawn, all articles in his possession belonging to the state. The State Controller is hereby required to withhold the last week's warrant of all attaches until they present a certificate from the Secretary of State to the effect that the property of the state (or so much thereof as has not been necessarily consumed in the discharge of the duties of their office), for which he holds receipts, has been returned to his custody.

An Act prescribing the duties of the various state boards and Commissioners as they are now constituted and restricting the powers of state officers and employees.

Approved March 18, 1895, 107.

Purchase of Supplies, How Made.

2036. SECTION 1. From and after the passage of this Act, no officer or employee of the state shall purchase on the credit of the state any article of supplies, goods, wares or merchandise or obtain any services to be rendered by any person for the state, except by expressed permission and written authority previously obtained from the board or commission, or a majority of the members thereof having control and supervision of the department or office for which such purchase is made or such services are rendered. Except only in cases where such officer or employee has specific authority to purchase or obtain the same, conferred upon him by statute.

Examiners Not to Allow Claim.

2037. SEC. 2. The State Board of Examiners shall not allow nor the State Treasurer pay any claim of any person for goods sold or services rendered unless the same were sold or rendered in accordance with the provisions of section one of this Act.

An Act to restrict the creation of deficiencies in funds or appropriations set apart or made by the Legislature of the State of Nevada.

Approved March 12, 1897, 80.

Restriction of Deficiencies.

2038. SECTION 1. No board, commission, state officer or employee of the State of Nevada, having charge of or entrusted with the expenditure or disbursement of any money set apart or appropriated by the legislature to be paid out or expended for the benefit of the State of Nevada, shall expend or pay out, or contract to be expended or paid out, any sum of money whatever in excess of the amount so set apart or appropriated by the legislature, so as to create a deficiency in such fund or appropriation, unless such deficiency, and the amount thereof shall have first been authorized in writing by the State Board of Examiners.

No Allowance Nor Warrant.

2039. SEC. 2. The State Board of Examiners is hereby prohibited from allowing, and the State Controller from drawing his warrant for any deficiency claim against the State of Nevada, not incurred or created in accordance with the provisions of section one of this Act.

CAPITOL COMMISSIONERS.

An Act to amend an Act approved February 8, 1887, entitled "An Act to create a Board of Capitol Commissioners, and to define its duties and to repeal sections ten and eleven of an Act concerning the office of Secretary of State."

Approved March 11, 1899, 80.

Board to Consist Of.

2040. SECTION 1. A Board of Capitol Commissioners is hereby created to consist of the Governor, Lieutenant-Governor, Secretary of State, State Controller and State Treasurer.

Chairman—Quorum.

2041. SEC. 2. The Governor shall act as Chairman of said board and during his absence a Chairman shall be chosen to act in his stead and place. Three members of said board shall constitute a quorum for the transaction of all business, and shall determine all questions that may come before said board.

Regular Set of Books Kept.

2042. SEC. 3. A regular and itemized set of books shall be kept of the meetings and all business transactions of said board. The Governor's Private Secretary shall act as Clerk of said board, and the State Treasurer is hereby empowered to appoint the watchman over the treasury vault in the capitol building.

Supervision and Control of Buildings.

2043. SEC. 4. Said board shall have the supervision over, and control of the state capitol building, the capitol grounds and water works, the state printing office building and grounds, and all other state buildings, grounds and properties not otherwise provided for by law.

Control Expenditures and Appropriations.

2044. SEC. 5. Said board shall control the expenditure of all appropriations for furnishing, repairing and maintaining said buildings and grounds, offices and property connected therewith; for defraying all contingent expenses of all state and other officers about said building; for transportation of books and documents; storage and transportation of state property, and for salaries of porters, watchmen and laborers about said buildings and property, unless otherwise provided.

Repeal.

SEC. 6. Sections ten and eleven of an Act entitled "An Act concerning the office of Secretary of State, approved February 14, 1865 [p. 149], are hereby repealed.

APPOINTED OFFICERS.

An Act providing for the appointment of a State Live Stock Inspector, defining his duties, and fixing his compensation.

Became a law March 22, 1899, 131.

Governor to Appoint.

2045. SECTION 1. The Governor of the State of Nevada is hereby authorized and empowered to appoint a State Live Stock Inspector to aid and assist in developing and protecting the live stock industry of the State of Nevada. Said State Live Stock Inspector shall be of recognized skill and ability and shall hold his position at the will and pleasure of the Governor as hereto provided.

Duties of Inspector.

2046. SEC. 2. Said State Live Stock Inspector shall devote his time to the investigation of the nature, causes of and remedies for diseases of horses, mules, cattle, swine, sheep and other domestic animals.

Under Control of Board of Health.

2047. SEC. 3. Said State Live Stock Inspector shall be under the control of the Board of Health, who may request the removal of said Inspector whenever in their judgment the good of the state may demand it.

Five Freeholders Can Demand Inspector.

2048. SEC. 4. It shall be lawful for any five freeholders and residents of this state to go before a Justice of the Peace, the District Attorney or the Board of County Commissioners and demand the presence and services of the said State Live Stock Inspector.

Duty of Officers—Duty of Inspector.

2049. SEC. 5. It shall be the duty of the Justice of the Peace, District Attorney or Board of County Commissioners to notify said State Live Stock Inspector at once at his office by letter or telegram. It shall be his duty to go to the locality named and give such aid and instructions as he may think best for the prevention or cure of the diseases with which he shall find such live stock infected with.

Diseased Stock to Be Examined and Quarantined.

2050. SEC. 6. If upon investigation said State Live Stock Inspector shall be satisfied that said live stock is infected with what is known as pleuro-pneumonia, tuberculosis, anthrax, glanders, or any other contagious and infectious disease against which he may think best to quarantine, he shall immediately notify the district court of the judicial district or one of the Judges thereof in vacation in said county in which said diseased stock may be found, setting forth in writing the number of stock infected, the character and type of the disease. Said court or Judge thereof in vacation shall thereupon issue an order in writing commanding the Sheriff to immediately summon five freeholders, being stock-raisers, who shall proceed at once to the locality where such diseased stock may be, and carefully examine the same with the Inspector. If a majority of said freeholders shall find such stock infected as aforesaid, they shall certify such finding in writing to the court or Judge aforesaid, who shall thereupon issue an order in writing commanding the Sheriff to compel the owners or other persons in whose possession such diseased stock shall be found, to immediately quarantine such diseased stock, and to close all creameries or dairies in the affected district until such time as the disease abates, and that no stock shall be moved from the infected district until they have been examined and the Inspector's certificate of health accompanying them, and that all stock dying from contagious or infectious diseases that their carcasses shall be burned immediately and not buried or left to decay.

Stock from Affected Districts Outside of This State Inspected—Inspector's Fee.

2051. SEC. 7. No stock from affected districts in other states or territories will be allowed to cross the lines and enter Nevada until they have first been inspected at the owner's expense. The Inspector's fee shall be ten dollars per day and necessary traveling expenses. This shall be applied to the general fund of the State of Nevada. The Inspector may be notified by letter or telegram; he shall go at once to the place on the border line mentioned and inspect said stock; if found healthy, give a certificate of health to those in charge of said stock on the payment of Inspector's fees and necessary traveling expenses.

Misdemeanor for Violation.

2052. SEC. 8. Any person or persons, company or corporation who shall violate any provision of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed five hundred dollars nor less than fifty dollars, or by imprisonment in the county jail not more than six months nor less than fifty days for each offense.

Sheriff's Compensation—Freeholder's Compensation.

2053. SEC. 9. The Sheriff shall receive for his services under this Act such compensation as is now provided by law for similar labor and the freeholders making such examinations as aforesaid shall receive such compensation as is now provided by law for jurors' services, which shall be allowed by the district court of the district, and paid out of the county treasury of the county in which such diseased stock shall be found, as other claims are paid.

Inspector to Report to Board of Health—What Report Shall Contain.

2054. SEC. 10. Said Inspector shall report to the Board of Health in writing at least once in every month setting forth the locality or localities visited as provided in the preceding section, the kind of stock inspected, the time taken to inspect them, the number admitted to cross the line into Nevada, the number permitted to leave infected districts and to whom certificates of health for stock were given and the amount of fee received for inspecting and issuing certificates, also the kind of stock treated, the type and character of the disease, the remedies prescribed and the results as far as known. He shall also render an account for the number of miles traveled and the actual sum of money paid out by him therefor; and if found correct shall be audited and allowed by the board as is now provided by law.

Secretary of Board to Publish Information.

2055. SEC. 11. The Secretary of the aforesaid board shall from time to time select from said report and publish such information as he may think valuable to the people of Nevada. This information may be published in connection with the report relating to agriculture or in a separate bulletin.

Salary of Inspector.

2056. SEC. 12. The State Live Stock Inspector herein provided for shall receive a salary not to exceed twelve hundred dollars per annum and necessary traveling expenses, payable out of the general fund of the State of Nevada as other claims are paid.

Approval by Board of Examiners.

2057. SEC. 13. The State Controller is hereby authorized, empowered and required to draw his warrant in favor of the State Live Stock Inspector created by this Act, for the salary and traveling expenses provided for in this Act, when approved by the Board of Examiners, and the State Treasurer is hereby authorized, empowered and directed to pay the same.

Secretary of Board of Health to Report to Legislature.

2058. SEC. 14. It shall be the duty of the Secretary of said Board of Health to collect the information derived from the report made by said Inspector, as provided for in this Act, and make a report to the state legislature within ten days of the date of the meeting thereof, such data and useful knowledge, together with suggestions as may be beneficial to the stock interests of the State of Nevada.

When in Force.

2059. SEC. 15. The fact that there now exist in certain parts of this state germs of anthrax and dangerous infectious diseases among domestic animals, creates an emergency within the meaning of the constitution; therefore this Act shall be in force from and after its passage.

Domestic Sheep Exempt.

2060. SEC. 16. Domestic sheep are exempt from the provisions of this Act. Sheep entering this state from adjoining states or territories are also exempt after they have been in this state six months.

An Act empowering the Governor to appoint Commissioners of Deeds, and to define their duties.

Approved February 4, 1865, 130.

Governor May Appoint—Term of Office.

2061. SECTION 1. The Governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the territories and districts thereof, and in each foreign state, kingdom, province, territory and colony, one or more Commissioners of Deeds, to continue in office four years, unless sooner removed by him. Every Commissioner of Deeds so appointed, shall have power to administer oaths, and to take and certify depositions and affidavits to be used in this state, and also to take the acknowledgment or proof of any deed or other instrument, to be recorded in this state, and duly certify the same under his hand and official seal.

Legality Same as Notaries.

2062. SEC. 2. All oaths administered by said Commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs of deeds, and other instruments aforesaid, taken and certified by them and under their seals as such Commissioners, shall have the same force and effect in law, for all purposes whatever, as if done and certified by any Notary Public or other officer, in and for this state, who is now or hereafter may be authorized by law to perform such Act.

Oath of Office.

2063. SEC. 3. Before any Commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath that he will faithfully perform and discharge all the duties of his office, which oath shall be filed in the office of the Secretary of State of the State of Nevada, within six months after being taken and subscribed.

SEC. 4 is repealed, Stats. 1865, 152.

Copy of Act Transmitted to Appointees.

2064. SEC. 5. It is hereby made the duty of the Secretary of State to transmit a copy of this Act, with the commission, to each person appointed under the provisions thereof.

Fee, and Application Of.

2065. SEC. 6. Before any commission shall be delivered to any appointee under the provisions of this Act, a fee of ten dollars on such commission, exclusive of other legal charges thereon, shall be paid therefor to the said Secretary of State, and shall be accounted for by him and paid into the "library fund" of this state, to be appropriated to the purchase of books therefor, in such manner as is or may be provided by law.

Act Repealed.

2066. SEC. 7. An Act of the legislative assembly of the Territory of Nevada, entitled "An Act empowering the Governor to appoint Commissioners of Deeds, and defining the duties of such office," approved October thirtieth, one thousand eight hundred and sixty-one [p. 2], is hereby repealed.

An Act to authorize the appointment of state detectives.

Approved March 5, 1885, 66.

Governor May Appoint.

2067. SECTION 1. Upon the petition of five or more qualified electors of the State of Nevada and the execution of bonds as hereinafter provided, the Governor may appoint state detectives for any term not exceeding two years, the appointment to be made in writing and signed by the Governor; *provided*, that at no time shall said detectives exceed five in number.

Detectives to Give Bonds.

2068. SEC. 2. Each detective appointed under this Act shall, before receiving his appointment, execute to the State of Nevada and deliver to the Governor, for the benefit of the State of Nevada and the persons who may become interested therein, a bond in the sum of five thousand (\$5,000) dollars with sureties to be approved by the Governor, which bond shall be conditional for the faithful performance of the duties of the detective named therein, and for the payment of any damages which may be sustained by any persons by reason of any malicious, unlawful arrest or imprisonment.

Shall Have Power of a Peace Officer.

2069. SEC. 3. Any detective appointed under this Act shall have the powers of a peace officer, and may arrest any person or persons accused or suspected of violating any of the criminal laws of this state; but when such arrest is made without a warrant the detective making the same shall, without unnecessary delay, enter a charge against the person or persons so arrested before a magistrate having jurisdiction of the offense, and secure process for his detention, or release the defendant from custody.

Duties of Detectives.

2070. SEC. 4. It shall be the duty of any detective arresting any person to deliver such person as soon as distance and circumstances will permit to the Sheriff of the county wherein the crime was committed or is triable; and, unless previously done, to make and enter a criminal complaint accusing such person of the crime for which the arrest was made.

Governor May Revoke Appointments.

2071. SEC. 5. The Governor may at any time revoke any appointments made by virtue of this Act, and make other appointments as hereinbefore provided.

Detectives to Receive No Fees from State or Counties.

2072. SEC. 6. No detective appointed under this Act shall receive any fees or compensation from the State of Nevada, or any county of the state; but nothing herein shall deny such detective the right to receive any reward offered for the apprehension of criminals.

An Act providing for the appointment and payment of an agent or agents, at Washington, D. C., for attending to the certification of lands granted by Congress to the State of Nevada.

Approved March 3, 1873, 114.

Land Agent at Washington.

2073. SECTION 1. The Board of Regents are hereby authorized and required to appoint an agent or agents, who shall be duly authorized to represent the State of Nevada, before the general land office and department of the interior, at Washington, D. C.; and whose duty it shall be to attend to the certification of lands selected in satisfaction of the grants made by Congress to said state, and to represent said state in all matters growing out of the adjustment and settlement of said grants. The said Board of Regents shall fix the compensation of the said agent or agents, at a sum not exceeding one thousand five hundred dollars per annum; and the amount so fixed shall be paid annually out of any moneys in the state treasury not otherwise appropriated, upon bills to be certified and approved by the Board of Examiners; in payment of which the Controller of State shall draw his warrant upon the Treasurer of State. And the sum of three thousand dollars is hereby appropriated for the aforesaid purpose.

Governor authorized to appoint in General Appropriation Act, Stats. 1885, 73, Sec. 38.

MISCELLANEOUS.

An Act to create a fund in the state treasury of the State of Nevada to be known as the fire insurance fund, and other matters pertaining thereto.

Approved March 6, 1897, 46.

Fire Insurance Fund.

2074. SECTION 1. There is hereby created in the state treasury of the State of Nevada, a fund to be known as the fire insurance fund, in which said fund all moneys received from insurance companies in payment of losses incurred upon buildings or other property belonging to the state, shall be placed.

Disposal of Money in Fund.

2075. SEC. 2. Whenever any building or other property of the state, upon which there is any insurance, shall be injured or destroyed by fire, the insurance, if any, which shall be collected on account of such injury or destruction shall be paid into the fire insurance fund created by section one of this Act and may thereafter be paid out and expended by the board, commission, or officer of the State of Nevada, having control or management of the building, or other property injured or destroyed, in repairing or replacing the same, in the manner following: The board, commission, or officer having in charge the care and supervision of the property destroyed or injured by fire, may repair, replace or supply the same from the fund created by section one of this Act; *provided*, that no greater sum shall be drawn from said fund by any Board of Commissioners, Board of Directors or Board of Regents, than the actual amount paid into the fund on the property or premises about to be repaired, replaced or supplied.

How Paid.

2076. SEC. 3. All claims and demands created under the provisions of this Act, shall be audited and paid as other claims against the state.

An Act to abolish the office of State Mineralogist, and provide for the care and preservation of the state museum.

Approved February 1, 1877, 59.

Office Abolished.

2077. SECTION 1. The office of State Mineralogist of the State of Nevada is hereby abolished.

Superintendent of Public Instruction Shall Be Curator of the Museum.

2078. SEC. 2. On and after the first day of January, A. D. one thousand eight hundred and seventy-nine, the Superintendent of Public Instruction shall be ex officio Curator of the State Museum of mineralogical, geological, and other specimens.

Duties of the Curator—Report.

2079. SEC. 3. The Curator, when visiting the several school districts in this state, in his capacity as Superintendent of Public Instruction, as is required by law, shall make inquiry, so far as practicable, into the resources of the mines situated in the respective districts, and inspect the same; collect specimens of ores, ascertain their value, catalogue, and place them in the state museum, and prepare for publication in the appendix of his biennial report as Superintendent of Public Instruction, a report as Curator of the state museum in detail of his acts performed and information obtained under the provisions of this Act.

SEC. 4 repealed, Stats. 1895, 76, and Sec. 5 is thus rendered nugatory.

An Act in relation to the keeping and preservation of the state capitol decorations, state mineral cabinet, mineral specimens, curios, etc.

Approved March 10, 1899, 69.

Capitol Decorations, Minerals, Curios, etc.

2080. SECTION 1. All state boards and state officers having jurisdiction in and control over any state property are specially forbidden to allow the state capitol decorations and bunting, the state mineral cabinets, mineral specimens, curios, and all state property of such character, from being borrowed or taken out by any person or societies, or removed from the premises of the state buildings at the capital seat; *provided*, in case of national, international and foreign expositions of the world's arts and productions, and upon a satisfactory bond being furnished, the mineral specimens and curios may be borrowed.

To Be Kept Intact.

2081. SEC. 2. The said boards and officers are specially instructed to use all means to preserve and keep intact all of the said named property.

An Act to prevent drunkenness in office, fixing the penalty thereof and providing for the enforcement of the same.

Approved February 17, 1887, 65.

Misdemeanor.

2082. SECTION 1. Any civil officer in this state who shall, during his term of office, become intoxicated, or under the influence of alcoholic, malt or vinous liquors, so that he shall not at all times be in proper condition for the discharge of the duties of his office, shall be deemed guilty of a misdemeanor in office, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars or imprisonment not exceeding one year, and shall be subject to removal from office by impeachment, if he be a state officer, and if a county or township officer, shall be removed from office by the judgment of the court in which the conviction is had, as a part of the penalty in such conviction.

Proceedings Instituted.

2083. SEC. 2. It shall be the duty of the Sheriff and his deputies, Constable and his deputies, District Attorneys and all other peace officers in this state, upon receiving information from any person that the provisions of this Act have been violated, to immediately institute proceedings in the proper court against the person thus complained of, and prosecute the same with reasonable diligence to final judgment, and the provisions of this Act shall be specially charged to the grand juries of the several counties of the state at each sitting of the district court.

Judgment Roll Certified in Case of State Officer.

2084. SEC. 3. In case of the conviction of any state officer under the provisions of this Act, it shall be the duty of the prosecuting officer obtaining such conviction to file a certified copy of the judgment roll with the Secretary of State, and the Secretary of State shall lay the same before the legislature at its next session after receiving said judgment roll.

An Act concerning the use of the legislative halls in the capitol building.

Approved January 28, 1879, 14.

Public Use of Legislative Halls Prohibited.

2085. SECTION 1. From and after the passage of this Act, the public use of the legislative halls, in the state capitol building, except during the biennial sessions of the legislature, is hereby prohibited.

State Officers Restricted.

2086. SEC. 2. The State Board of Capitol Commissioners, Judges of the Supreme Court, other state officers, or any person in authority, shall have no power to permit any persons, corporations, courts or assemblage of persons, to occupy the aforesaid legislative halls, for the transaction of any public business whatever.

Capitol Commissioners to Take Charge of Halls.

2087. SEC. 3. It shall be the duty of the State Capitol Commissioners to take charge of the aforesaid legislative halls immediately after the final adjournment of each session of the legislature, and to strictly enforce the provisions of this Act.

SALARIES OF STATE OFFICERS.

An Act authorizing the payment of the salaries of officers fixed by law.

Approved March 8, 1879, 108.

Salary Payable Monthly.

2088. SECTION 1. All state officers whose salaries are fixed by law shall be entitled, from and after the passage of this Act, to receive same on the first of each calendar month; *provided*, that nothing in this Act shall be construed to mean the payment of salaries in advance.

Warrants.

2089. SEC. 2. The Controller is hereby authorized and directed to draw his warrant, and the State Treasurer to pay same, in accordance with the first section of this Act.

SALARY MUST BE FIXED BY LAW IN FORCE PRIOR TO ELECTION OF OFFICER. *King v. Hallock*, 16 Nev. 152.

APPROPRIATION FOR TWO OFFICES IN SOLIDO. *Gallup v. Hallock*, 19 Nev. 371; *Cutting v. LaGrave*, 23 Nev. 120.

An Act to amend an Act entitled "An Act fixing the salaries of the Justices of the Supreme Court of the State of Nevada," approved February 19, 1881.

Approved March 17, 1891, 64.

Salary of Justices of Supreme Court.

2090. SECTION 1. From and after the expiration of the terms of the present incumbents each Justice of the Supreme Court shall receive a salary of four thousand five hundred dollars a year, payable in the manner and at the times now prescribed by law.

Act to Take Effect.

2091. SEC. 2. This Act shall take effect first in fixing the salary of the Justice of the Supreme Court to be elected in eighteen hundred and ninety-two; second, in fixing that of each succeeding Justice as he is elected.

An Act reducing and regulating the salaries of certain state officers of the State of Nevada.

Approved March 21, 1891, 104.

Salaries of State Officers, 1895.

2092. SECTION 1. From and after the first day of January, A. D. eighteen hundred and ninety-five, the following annual salaries shall be paid to the various state officers of this state, at the time and in the manner prescribed by law: To the Governor, four thousand dollars; to the Secretary of State, twenty-four hundred dollars; to the State Controller, twenty-four hundred dollars; to the State

Treasurer, twenty-four hundred dollars; to the Attorney-General, two thousand dollars; to the Surveyor-General and ex officio Land Register, twenty-four hundred dollars, payable out of the state school fund. * * *

The portion omitted is superseded, Sec. 2093.

Sec. 2 superseded, Sec. 2094.

An Act fixing the salary of the Superintendent of Public Instruction.

Approved March 15, 1897, 86.

Superintendent of Public Instruction.

2093. SECTION 1. From and after the first Tuesday after the first Monday in January, eighteen hundred and ninety-nine, the salary of the Superintendent of Public Instruction shall be two thousand dollars (\$2,000) per annum, payable out of the general school fund; and he shall receive no additional compensation for any ex officio duties that are now, or may hereafter be required of him by law.

An Act to define the duties of the Lieutenant-Governor, when acting as an ex officio officer and fixing his salary therefor.

Approved March 7, 1899, 51.

Lieutenant Governor Ex Officio Adjutant-General—Salary, \$1,800.

2094. SECTION 1. The Lieutenant-Governor shall be ex officio Adjutant-General of the state, and for the services he shall render as such, and while acting as Governor during the sickness or absence of the Governor from the state, and while acting as President of the Senate during the session of the legislature, he shall receive an annual salary of eighteen hundred dollars, to be paid at the same time and in the same manner as other state officers are paid.

An Act concerning the residence of the Lieutenant-Governor.

Approved March 5, 1895, 30.

Need Not Reside at State Capital.

2095. SECTION 1. The Lieutenant-Governor shall not be required to reside at the seat of state government.

An Act reducing and regulating the salaries and compensation of certain state officers and attaches of the state government of Nevada.

Approved February 21, 1881, 43.

SECTIONS 1, 2, 3 and 4 are superseded by later salary Acts.

No Extra Compensation.

2096. SEC. 5. Whenever the Governor's Private Secretary, or any deputy or clerk in any state office is appointed as clerk or secretary of any state board or commission, whether by such board or commission or the legislature, he shall serve as such clerk or secretary without any compensation, unless such compensation is specifically fixed by law.

Warden of Prison.

2097. SEC. 6. From and after the passage of this Act the Warden of the State Prison shall receive a salary of two thousand dollars per annum.

State Senators and Members of Assembly.

2098. SEC. 7. To State Senators and Members of the Assembly, eight dollars per day for each day of service, provided the total amount so paid shall not exceed the sum of four hundred dollars at any regular session, and fifteen cents per mile

State Officers Restricted.

2086. SEC. 2. The State Board of Capitol Commissioners, Judges of the Supreme Court, other state officers, or any person in authority, shall have no power to permit any persons, corporations, courts or assemblage of persons, to occupy the aforesaid legislative halls, for the transaction of any public business whatever.

Capitol Commissioners to Take Charge of Halls.

2087. SEC. 3. It shall be the duty of the State Capitol Commissioners to take charge of the aforesaid legislative halls immediately after the final adjournment of each session of the legislature, and to strictly enforce the provisions of this Act.

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An Act authorizing the payment of the salaries of officers fixed by law.

Approved March 8, 1879, 108.

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Approved March 15, 1897, 86.

Superintendent of Public Instruction.

2093. SECTION 1. From and after the first Tuesday after the first Monday in January, eighteen hundred and ninety-nine, the salary of the Superintendent of Public Instruction shall be two thousand dollars (\$2,000) per annum, payable out of the general school fund; and he shall receive no additional compensation for any ex officio duties that are now, or may hereafter be required of him by law.

An Act to define the duties of the Lieutenant-Governor, when acting as an ex officio officer and fixing his salary therefor.

Approved March 7, 1899, 51.

Lieutenant Governor Ex Officio Adjutant-General—Salary, \$1,800.

2094. SECTION 1. The Lieutenant-Governor shall be ex officio Adjutant-General of the state, and for the services he shall render as such, and while acting as Governor during the sickness or absence of the Governor from the state, and while acting as President of the Senate during the session of the legislature, he shall receive an annual salary of eighteen hundred dollars, to be paid at the same time and in the same manner as other state officers are paid.

An Act concerning the residence of the Lieutenant-Governor.

Approved March 5, 1895, 30.

Need Not Reside at State Capital.

2095. SECTION 1. The Lieutenant-Governor shall not be required to reside at the seat of state government.

An Act reducing and regulating the salaries and compensation of certain state officers and attaches of the state government of Nevada.

Approved February 21, 1881, 43.

Sections 1, 2, 3 and 4 are superseded by later salary Acts.

No Extra Compensation.

2096. SEC. 5. Whenever the Governor's Private Secretary, or any deputy or clerk in any state office is appointed as clerk or secretary of any state board or commission, whether by such board or commission or the legislature, he shall serve as such clerk or secretary without any compensation, unless such compensation is specifically fixed by law.

Warden of Prison.

2097. SEC. 6. From and after the passage of this Act the Warden of the State Prison shall receive a salary of two thousand dollars per annum.

State Senators and Members of Assembly.

2098. SEC. 7. To State Senators and Members of the Assembly, eight dollars per day for each day of service, provided the total amount so paid shall not exceed the sum of four hundred dollars at any regular session, and fifteen cents per mile

State Officers Restricted.

2086. SEC. 2. The State Board of Capitol Commissioners, Judges of the Supreme Court, other state officers, or any person in authority, shall have no power to permit any persons, corporations, courts or assemblage of persons, to occupy the aforesaid legislative halls, for the transaction of any public business whatever.

Capitol Commissioners to Take Charge of Halls.

2087. SEC. 3. It shall be the duty of the State Capitol Commissioners to take charge of the aforesaid legislative halls immediately after the final adjournment of each session of the legislature, and to strictly enforce the provisions of this Act.

SALARIES OF STATE OFFICERS.

An Act authorizing the payment of the salaries of officers fixed by law.

Approved March 8, 1879, 108.

Salary Payable Monthly.

2088. SECTION 1. All state officers whose salaries are fixed by law shall be entitled, from and after the passage of this Act, to receive same on the first of each calendar month; *provided*, that nothing in this Act shall be construed to mean the payment of salaries in advance.

Warrants.

2089. SEC. 2. The Controller is hereby authorized and directed to draw his warrant, and the State Treasurer to pay same, in accordance with the first section of this Act.

SALARY MUST BE FIXED BY LAW IN FORCE PRIOR TO ELECTION OF OFFICER. *King v. Hallock*, 16 Nev. 152.

APPROPRIATION FOR TWO OFFICES IN SOLIDO. *Gallup v. Hallock*, 19 Nev. 371; *Cutting v. LaGrave*, 23 Nev. 120.

An Act to amend an Act entitled "An Act fixing the salaries of the Justices of the Supreme Court of the State of Nevada," approved February 19, 1881.

Approved March 17, 1891, 64.

Salary of Justices of Supreme Court.

2090. SECTION 1. From and after the expiration of the terms of the present incumbents each Justice of the Supreme Court shall receive a salary of four thousand five hundred dollars a year, payable in the manner and at the times now prescribed by law.

Act to Take Effect.

2091. SEC. 2. This Act shall take effect first in fixing the salary of the Justice of the Supreme Court to be elected in eighteen hundred and ninety-two; second, in fixing that of each succeeding Justice as he is elected.

An Act reducing and regulating the salaries of certain state officers of the State of Nevada.

Approved March 21, 1891, 104.

Salaries of State Officers, 1895.

2092. SECTION 1. From and after the first day of January, A. D. eighteen hundred and ninety-five, the following annual salaries shall be paid to the various state officers of this state, at the time and in the manner prescribed by law: To the Governor, four thousand dollars; to the Secretary of State, twenty-four hundred dollars; to the State Controller, twenty-four hundred dollars; to the State

Treasurer, twenty-four hundred dollars; to the Attorney-General, two thousand dollars; to the Surveyor-General and ex officio Land Register, twenty-four hundred dollars, payable out of the state school fund. * * *

The portion omitted is superseded, Sec. 2093.

Sec. 2 superseded, Sec. 2094.

An Act fixing the salary of the Superintendent of Public Instruction.

Approved March 15, 1897, 86.

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for each mile actually traveled in going to and returning from the place of meeting, which said mileage shall, however, be computed, in all cases, upon the shortest route, if there be two or more routes, to the said place of meeting; *provided*, that each member may be allowed not exceeding twenty dollars for the purchase of newspapers and stationery during each session. *As amended, Stats. 1893, 73.*

Superintendent and Matron of Orphans' Home.

2099. SEC. 8. From and after the first day of January, eighteen hundred and eighty-three, the salary of the Superintendent and Matron of the State Orphans' Home shall be two thousand dollars per annum for the services of both, and the salary of the teacher shall not exceed seven hundred and fifty dollars per annum.

State Printer.

2100. SEC. 9. From and after the first day of January, eighteen hundred and eighty-three, the Superintendent of State Printing shall receive two thousand dollars per annum, which shall be in full for his services as Superintendent of State Printing.

An Act reducing and regulating the salaries and compensation of certain attaches of the government of the State of Nevada.

Approved March 6, 1893, 83.

Deputy State Officers.

2101. SECTION 1. From and after the first Monday of January, A. D. eighteen hundred and ninety-five, the following salaries shall be paid to the following named attaches of the state government: To the Governor's Private Secretary and ex officio Adjutant-General, twelve hundred dollars per annum, and he shall act as Clerk of the Board of Pardons without further compensation. To the Deputy Secretary of State, twelve hundred dollars per annum, and he shall act as Clerk of the Board of Examiners and of the State Prison Commissioners without further compensation. To the Deputy State Controller, twelve hundred dollars per annum, and he shall act as Clerk of the Board of State Printing Commissioners without further compensation. To the Deputy in the Surveyor-General and State Land Register's office, twelve hundred dollars per annum, payable out of the state school fund. To an additional clerk in the Land Register's office, when his employment is authorized by law, twelve hundred dollars per annum, payable out of the state school fund. * * *

For salary of Deputy Treasurer, see next section.

An Act fixing the salary of the Deputy State Treasurer of the State of Nevada.

Approved March 14, 1893, 84.

Salary of Deputy State Treasurer.

2102. SECTION 1. From and after the passage of this Act the salary of the Deputy State Treasurer of Nevada shall be fourteen hundred dollars per annum, payable as other salaries are now paid.

Shall Act as Clerk.

2103. SEC. 2. He shall act as Clerk of the Board of Commissioners for the Care of the Insane, without further compensation.

COUNTY AND TOWNSHIP OFFICERS.

An Act to create a Board of County Commissioners in the several counties of this state and to define their duties and powers.

Approved March 8, 1865, 257.

Commissioners, When Elected and Terms of Office—Vacancies, How Filled.

2104. SECTION 1. At the general election of the several counties in this state, in A. D. eighteen hundred and seventy, by the qualified electors of each county, a Board of County Commissioners, to consist of three members, shall be elected, to possess such qualifications and to have such powers as hereinafter provided; *provided*, that in any county where, at the last general election, there were polled four thousand or more votes, such board shall consist of five members. At the general election in A. D. eighteen hundred and seventy, and at such election held every two years thereafter, there shall be elected in such county one Commissioner to serve upon the Board of County Commissioners for the term of four years; and a term of four years shall be known, both in this Act and for the purpose of the election of County Commissioners, as the long term; and the other Commissioner or Commissioners, as the case may be, necessary to fill the board, shall, at said election, be elected to serve upon the board for the term of two years; *provided*, that in any county or counties which are or shall be under the provisions of this Act entitled to a board consisting of five County Commissioners, two of the Commissioners shall be elected to serve upon the board for the long term. In any county wherein at the last or any future general election there were or shall be polled for the first time four thousand or more votes, the board shall be increased to five members by appointment of the Governor, and such appointees shall hold their offices until the first Monday of January following the then next general election; and at such next general election in such county or counties, five County Commissioners shall be elected as provided in this section of this Act. Any vacancy or vacancies occurring in any Board of County Commissioners shall be filled by appointment of the Governor, and such appointee or appointees shall hold his or their offices until the first Monday of January following the then next general election, except as provided otherwise in this Act. *As amended, Stats. 1869, 92.*

NUMBER OF COMMISSIONERS MAY BE INCREASED OR DECREASED BY LEGISLATURE. *Copeland v. Woodbury, 17 Nev. 337.*

Qualifications and Terms of Office—Proviso.

2105. SEC. 2. Said Commissioners shall be qualified electors of their respective counties, and shall enter upon their duties on the first Monday of January succeeding their election, and shall hold their offices two or four years, as the case may be, as provided in this Act; and the term of office of two years or four years, as the case may be, shall expire at twelve o'clock p. m. of the day preceding the first Monday in January following a general election. No county or township officer shall be eligible to the office of Commissioner. On entering upon the discharge of the duties of his office, each Commissioner, whether elected or appointed under the provisions of this Act, shall take and subscribe to the oath of office as prescribed by law; *provided*, that in case such Commissioner shall neglect or refuse, during the period of fifteen days from and after the first Monday of January succeeding his election, to take the oath of office as herein directed, his office shall be deemed vacant, and such vacancy shall be filled by appointment as provided in section one of this Act; *and, provided further*, that the term of office of a person appointed to the office of County Commissioners shall not by virtue of the appointment extend beyond the hour of twelve o'clock p. m. of the day preceding the first Monday of January next following a general election. *As amended, Stats. 1869, 92.*

for each mile actually traveled in going to and returning from the place of meeting, which said mileage shall, however, be computed, in all cases, upon the shortest route, if there be two or more routes, to the said place of meeting; *provided*, that each member may be allowed not exceeding twenty dollars for the purchase of newspapers and stationery during each session. *As amended, Stats. 1893, 73.*

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Meetings of Board—Board of Canvassers.

2106. SEC. 3. The meetings of the Board of County Commissioners shall be held at the county seats of their respective counties on the first Mondays of January, April, July and October of each year, and shall continue from time to time until all the business before them is disposed of; *provided*, that in all counties containing a voting population of five hundred and thirty-five but less than five hundred and seventy-five, to be determined by the vote cast therein for Representative in Congress at the general election in the year 1896, special meetings may be held at the county seat for the transaction of business pertaining to the county whenever such meeting shall be authorized by the board by resolution duly adopted and entered upon its minutes at a regular meeting; the members attending such special meeting or meetings shall be entitled to the same mileage as is now provided by law to be paid them for attendance at regular meetings. The board shall also meet on the tenth day after each general election to canvass election returns. *As amended, Stats. 1897, 90.*

Brumfield v. Com. Douglas County, 2 Nev. 65.

MEETINGS OF COMMISSIONERS. *State v. Manhattan S. M. Co., 4 Nev. 318.*

Special Meetings.

2107. SEC. 4. If, at any time after the final adjournment of a regular meeting, the business of the county shall require a meeting of the board, a special meeting of the same may be ordered by a majority of the board. The order shall be entered on the records of the board, and the Clerk shall give at least five days' notice of such special meeting to any member of the board not joining in the order; and shall give notice for one week, by publication in a newspaper, if one be published in the county; if none, by notice posted on the court house door. The order shall specify the business to be performed, and no other shall be transacted at such special meeting.

COUNTY COMMISSIONERS—MEETINGS—RECORDS. Any act of a Board of County Commissioners as such, between its regular meetings, is void where its records show that at the last preceding regular meeting such meeting had been adjourned *sine die* and fail to show a compliance with above section. *Beck v. Com. Washoe Co., 22 Nev. 15.*

Quorum—Clerk—Absence of Chairman:

2108. SEC. 5. A majority of the board shall form a quorum for the transaction of business, and all sessions of the board shall be public. They shall elect one of their number as Chairman of the board, and the County Clerk shall be Clerk thereof. The Clerk shall keep a full and complete record of all the proceedings of the board, and all their proceedings shall be entered on the records. The record of each day's proceedings of said board shall be signed by the Chairman and the Clerk. In case the Chairman shall be absent at any meeting of the board, all documents, records, or papers requiring the signature of the board, shall be signed by the members present.

POWERS OF COUNTY COMMISSIONERS LIMITED AND SPECIAL. If the authority of the Board of County Commissioners, acting under limited and special powers, to do a particular thing is questioned, their record must exhibit affirmatively all the facts necessary to give them authority to do such thing, otherwise the presumption is against their jurisdiction. *Swift v. Ormsby Co., 6 Nev. 95.*

JURISDICTION OF COMMISSIONERS MUST BE AFFIRMATIVELY SHOWN. Whenever the jurisdiction of the Board of County Commissioners depends upon certain facts to be ascertained and determined by it, its record should show that it acted upon the evidence presented and adjudged the facts to be sufficient. *Johnson v. Eureka Co., 12 Nev. 28; Godchaux v. Carpenter, 19 Nev. 415.*

RECORDS—BOARD OF COMMISSIONERS AS BOARD OF EQUALIZATION. *State v. C. P. R. R. Co., 17 Nev. 259.*

Compensation of Clerk.

2109. SEC. 6. The Clerk shall receive a compensation for his services of five

dollars per day for each day actually employed; in no case to exceed one hundred dollars per annum in the aggregate, and no fee, or other compensation whatever, shall be allowed the Clerk for any service connected with the proceedings or business of the Board of County Commissioners.

Records Kept at Office of Clerk.

2110. SEC. 7. The books, records, and accounts of the board shall be kept at the office of the Clerk of the Board, and shall, during business hours, be open to public inspection free of charge.

Powers and Jurisdiction of Board.

2111. SEC. 8. The Board of Commissioners shall have power and jurisdiction in their respective counties:

First—To make orders respecting the property of the county in conformity with any law of this state, and to take care of and preserve such property.

Second—To examine, settle, and allow all accounts legally chargeable against the county, in the manner provided in this Act; and to levy, for the purposes prescribed by law, such amount of taxes on the assessed value of real and personal property in the county as may be authorized by law; *provided*, the salary of the District Judge need not be audited by the board, but the County Auditor shall, on the first day of each quarter year, draw his warrant on the County Treasurer in favor of the District Judge, for the amount due such Judge as salary for the quarter year preceding.

Third—To examine and audit the accounts of all officers, having the care, management, collection, or disbursement of any money belonging to the county or appropriated by law, or otherwise, for its use and benefit.

Fourth—To lay out, control, and manage public roads, turnpikes, ferries, and bridges within the county, in all cases where the law does not prohibit such jurisdiction, and to make such orders as may be necessary and requisite to carry its control and management into effect.

Fifth—To take care of and provide for the indigent sick of the county, in such a manner only as is or may be provided by law.

Sixth—To divide the county into townships and to change the divisions of the same, and to create new townships as the convenience of the county may require.

Seventh—To establish, change, and abolish election precincts, and to appoint Inspectors and Judges of Elections.

Eighth—To control and manage the property, real and personal, belonging to the county, and to receive, by donation, any property for the use and benefit of the county.

Ninth—Lease or purchase any real or personal property, necessary for the use of the county; *provided*, no purchase of real property shall be made unless the value of the same be previously appraised and fixed by three disinterested persons, to be appointed for that purpose by the District Judge, who shall be sworn to make a true appraisement thereof, according to the best of their knowledge and ability.

Tenth—To sell at public auction, at the court house of said county, after at least thirty days' previous public notice (in the same manner as required by law for the sale of like property on execution), and cause to be conveyed any property belonging to the county, appropriating the proceeds of such sale to the use of the same.

Eleventh—To cause to be erected and furnished, a court house, jail, and such other public buildings as may be necessary, and to keep the same in repair; *provided*, that the contract for building the court house, jail, and other buildings, be let out, after at least thirty days' previous public notice, as provided in subdivision ten of this section—in each case of a readiness to receive proposals therefor—to the lowest bidder, who will give good and sufficient security for the completion of any contract which he may make respecting the same. But no bid shall be accepted which the board may deem too high.

Twelfth—To control the prosecution or defense of all suits to which the county is a party; and to offer and allow rewards for the apprehension or conviction of defaulting or absconding county or township officers.

Thirteenth—To do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board. *As amended, Stats. 1871, 47.*

1. IN ABSENCE OF EXPRESS STATUTORY POWER TO SUE COUNTY. *Humboldt Co. v. Lander Co.* 24 Nev.
2. COUNTY COMMISSIONERS HAVE NO POWERS BEYOND THOSE EXPRESSLY GRANTED BY THE LEGISLATURE. *Waitz v. Ormsby Co.*, 1 Nev. 370; *Lyon Co. v. Ross*, 24 Nev.
3. COUNTY COMMISSIONERS—LIMITED JURISDICTION—EMINENT DOMAIN—HIGHWAYS TO ESTABLISH. *Godchaux v. Carpenter*, 19 Nev. 415.
4. POWERS OF COUNTY COMMISSIONERS SPECIAL AND LIMITED. Boards of County Commissioners are of special and limited powers, and must always exercise their powers as prescribed, where such prescription is material. *Hess v. Com. Washoe Co.*, 6 Nev. 104; *Beck v. Com. Washoe Co.*, 22 Nev. 15.
5. COUNTY COMMISSIONERS CANNOT COMPROMISE TAX SUIT—POWERS SPECIAL AND LIMITED—MUST NOT GO BEYOND POWERS GRANTED BY STATUTE. *State v. C. P. R. Co.*, 9 Nev. 79; *State v. C. P. R. Co.*, 10 Nev. 48.
6. MODE OF EXERCISING POWERS—CONTRACTS—PUBLIC BUILDINGS. *Sadler v. Com. Eureka Co.* 15 Nev. 39.
7. EMPLOYMENT OF ATTORNEYS BY COUNTIES. County Commissioners have authority to employ attorneys to protect the interests of their county in litigation affecting it, and to bind their county by contracts for the payment of such attorney's fees. *Ellis v. Washoe Co.* 7 Nev. 291; *Clark v. Lyon Co.*, 8 Nev. 181.
8. COMMISSIONERS TO FURNISH OFFICES FOR SOME COUNTY OFFICERS—PUBLIC EXPENDITURE. *Owen v. Nye Co.*, 10 Nev. 338.
9. POWERS OF, UNDER TOWN AND CITY GOVERNMENT ACT. *Norcross v. Shearer*, 23 Nev. 76.
10. *Champion v. Sessions*, 1 Nev. 478; *Waitz v. Ormsby Co.*, 1 Nev. 370; *Humboldt Co. v. Churchill Co.*, 6 Nev. 30; *Swift v. Ormsby Co.*, 6 Nev. 95; *State v. Canavan*, 17 Nev. 42; *State v. Com. Storey Co.*, 17 Nev. 96.

To Act on Demands Against County.

2112. SEC. 9. Every demand against the county, except the salaries of the Auditor and District Judge or Judges, shall be acted upon by the County Commissioners, and allowed or rejected in order of presentation, and must, after having been approved by the Board of County Commissioners, before it can be paid, be presented to the County Auditor to be allowed, who shall satisfy himself whether the money is legally due and remains unpaid, and whether the payment thereof from the treasury is authorized by law, and out of what fund. If he allow it, he shall indorse upon it, the word "allowed," with the name of the fund out of which it is payable, with the date of such allowance, and sign his name thereto, and draw his warrant on the county treasury for the amount allowed. No demand shall be approved, allowed, audited, or paid unless each several item, date, and value composing it be indorsed upon the same, by the order of the Board of County Commissioners, together with a reference to the law, order, contract, or authority by title, date, and section, authorizing the same.

CLAIM BASED ON JUDGMENT—MANDAMUS. *Humboldt Co. v. Lander Co.*, 22 Nev. 71.

Copy of Order of Allowance—Proceedings When Auditor Refuses to Allow.

2113. SEC. 10. The County Auditor shall sign no warrant authorizing the payment of money by the Treasurer (except for the salary of the Auditor and District Judge or Judges), until a copy of the order of the Board of County Commissioners, allowing the amount, and ordering the payment thereof, together with the account, have been submitted to him, and his allowance indorsed on such order, unless the said Auditor shall refuse to audit and allow the same, in which latter case the order shall be presented to the Board of County Commis-

sioners, with the refusal of the Auditor indorsed, and his reasons for such refusal; and should the Board order the issuance of such warrant, by a unanimous vote of all the members elected or appointed, the County Auditor shall immediately issue such warrants upon service upon him of a copy of such order of the board, certified to by the Clerk of the Board, that all the members elect voted for its passage; otherwise, the account shall be declared rejected, and no warrant shall thereupon issue. And if said Auditor allow such account in part, a warrant shall only issue for such part, unless the board, by a similar unanimous vote, allow a greater sum. No warrant shall be drawn by the Auditor on the County Treasurer on any fund, unless the money be therein at the time to pay the same; and any warrant drawn contrary to this provision of this section shall be void for all purposes whatsoever.

Duties of Auditor.

2114. SEC. 11. The Auditor shall number and keep a record of all demands allowed, showing the number, date, date of approval, amount, and name of the original holder, on what account allowed, and out of what fund payable. The County Auditor is required to be constantly acquainted with the exact condition of the treasury, and every lawful demand upon it; and shall report to the Board of County Commissioners, at each regular meeting thereof, the condition of each fund in the treasury. He shall keep a complete set of books for the county, which shall be open to the inspection of the public, free of charge, during business hours, in which shall be set forth in a plain and business like manner every money transaction of the county, so that he can, at any time when requested, tell the state of each fund, where the money came from, to what fund it belonged, and how and for what purpose it was expended, and also the collection made, and the money paid into the treasury by each and every officer.

Indebtedness Deducted.

2115. SEC. 12. No demand upon the treasury shall be approved by the Board of County Commissioners or allowed by the Auditor in favor of any person or officer in any manner indebted to the county, without first deducting the amount of such indebtedness; nor to any person or officer having the collection, custody, or disbursement of public funds, unless his account has been duly presented, passed, approved, and allowed as required by law; nor to any officer who shall have neglected or refused to comply with any of the provisions of this or any other Act regulating the duties of such officer, on being required, in writing, to comply therewith by any member of the Board of County Commissioners.

Board of Canvassers—District Judge to Canvass—Clerk to Issue Certificates—Application for Recount.

2116. SEC. 13. The Board of County Commissioners shall also act as a Board of Canvassers, and declare election returns, and cause a certificate of election to be given by their Clerks to any person who shall be elected to any legislative, county, or township office within their county; *provided*, that when the election shall be held for legislators or County Commissioners, the District Judge or Judges shall canvass and declare the election returns for such legislators or Commissioners for which purpose all election returns shall be sealed and delivered according to law, to the County Clerk, and by him opened in the presence of the District Judge or Judges, who shall declare the result as to legislators or County Commissioners, and the Clerk shall give to such persons elected as legislators or County Commissioners a certificate of his election, and the Board of County Commissioners shall then canvass the returns as to other offices; *and, provided further*, that when said Board of County Commissioners shall have canvassed the vote for legislators, county and township officers, and it shall appear from such canvass that any legislator, county, or township officer voted for at such election has received a majority of ten votes, or less, in such case, upon the application of the defeated candidate for such office, setting forth, under oath, that he has reason to

believe, and does believe, that a mistake or mistakes have occurred on the part of the Inspector of Election in any election precinct or precincts in said county sufficient to change the result of such election so far as said office is concerned, it shall then be the duty of said Board of County Commissioners to immediately proceed to recount the ballots for said office of any or all the precincts in said county wherein any mistake or mistakes are alleged to have occurred, and shall continue such count from day to day (Sundays excepted), until the votes of all the election precincts wherein any such mistake or mistakes are alleged to have occurred shall have been counted, and when said count is completed shall declare the result, and issue the certificate of election to the party entitled thereto, as determined by their said count, but they shall in no case be allowed to throw out any ballot upon any alleged legal defect, if from the face of such ballot it can, upon inspection, be ascertained for whom the elector intended to cast his ballot; and, *provided further*, that nothing herein contained shall prevent either party to said proceeding to contest the right to said office in the courts, in the manner now prescribed by law. *As amended, Stats. 1877, 83; 1879, 118.*

May Require New Bonds of Officers.

2117. SEC. 14. The Board of County Commissioners shall, by an order to that effect entered upon the record, require new bonds of any county or township officer, with additional securities, whenever they deem the same necessary, and may require of all county or township officers, intrusted with the collection, management, safe keeping, or disbursement of public funds, a monthly report of all collections and disbursements made by them during the preceding month; and may at any time examine their books, accounts, and vouchers. They shall see that all the county and township officers intrusted with the collection, disbursement, safe keeping, or management of the public revenue, faithfully perform the duties imposed upon them by law, and shall cause them to be prosecuted for any delinquencies.

To Publish Statement of Finances.

2118. SEC. 15. The Boards of County Commissioners shall, within sixty days after the passage of this Act, ascertain the amount of the existing debt of their respective counties, and the amount and condition of all revenue and property belonging to the county, and cause a statement of the same to be made out and published; and quarterly thereafter, the board shall publish a statement of the receipts and expenditures of the three months next preceding, and the accounts allowed. Said publications shall be made by making one insertion of the statement in a newspaper published in the county, but if no newspaper be published in the county, then such publication shall be made by posting a copy of said statement at the court house door, and at two other public places in the county.

Not to Contract Debts Not Authorized by Law.

2119. SEC. 16. The Board of County Commissioners shall not for any purpose contract debts or liabilities, except those expressly authorized by law, and whenever debts or liabilities have been created, which, added to the salaries of county officers and other estimated liabilities, fixed by law for the remainder of the year, shall equal the money on hand in the treasury at the time applicable to the payment of such salaries and said other fixed liabilities, then no allowance shall be made of any account, nor shall any expense be incurred other than salaries and fees and fixed liabilities, expressly authorized by law, during the remainder of said year. *As amended, Stats. 1893, 120.*

Salary—Proviso—Mileage.

2120. SEC. 17. Each member of the Board of County Commissioners shall be entitled to receive for his services a sum not to exceed in the aggregate the sum of six hundred dollars per annum; *provided*, that in any county where at the last general election there were polled four thousand or more votes, such member of the Board of County Commissioners shall be entitled to receive for his services a

sum not to exceed the sum of one thousand dollars in the aggregate during one year; *and, provided further*, that in any county where at the last general election there were polled five thousand or more votes, each member of the Board of County Commissioners shall be entitled to a sum not to exceed in the aggregate during one year the sum of thirteen hundred and twenty dollars, and each member of the Board of County Commissioners shall receive twenty cents per mile for each mile necessarily traveled in going to and returning from the county seat to attend any session of said board; *provided*, that but one charge shall be made for going and returning from the residence of such Commissioner at any one session of such board; *and, provided further*, that no Commissioner shall be allowed any compensation for services by reason of his being on any committee appointed by the board, or for any cause other than as herein provided. *As amended, Stats. 1869, 92; 1879, 126.*

Sec. 18 repealed, Stats. 1869, 92.

Board to Fill Vacancy in County and Township Offices.

2121. SEC. 19. When a vacancy shall occur in any county or township office, except the office of County Commissioner, the Board of County Commissioners shall appoint some suitable person, an elector of the county, to fill the vacancy until the next general election.

Daggett v. Collins, 2 Nev. 351.

Duty of District Attorney.

2122. SEC. 20. The District or Prosecuting Attorney, when not engaged in the district court, in the discharge of his official duties, shall attend the sittings of the Board of County Commissioners when engaged in auditing accounts and claims brought against the county, and in all cases shall oppose such accounts or claims as he may deem unjust, illegal, or extortionate.

District Attorney Not to Advocate Claims.

2123. SEC. 21. No District or Prosecuting Attorney, except for his own services, shall be allowed to present any claim, account, or demand for allowance against the county, or in any way to advocate the relief asked on a claim or demand made by another.

Objections to Claims May Be Made, How.

2124. SEC. 22. Any person being a resident and taxpayer of the county may appear before and file with the Board of County Commissioners of the county wherein he resides written objections to the allowance of any claim or claims, demand or demands against the county. Such objections in writing shall properly describe the claims or demands objected to, and the Board of County Commissioners shall file the same and embody such objections in the record of their proceedings, and lay such claims or demands on the table for a definite period of time, not less than ten days, at the expiration of which time they may proceed to consider the claims or demands so objected to, together with the objections, unless proceedings have been instituted in a court of competent jurisdiction to determine the validity of such claims or demands. *As amended, Stats. 1893, 120.*

RIGHT OF TAXPAYER TO OPPOSE CLAIM.—JURISDICTION OF BOARD TO ALLOW CLAIMS. *State v. Com. White Pine Co., 22 Nev. 80.*

Commissioners Shall Not Be Interested.

2125. SEC. 23. No member of the Board of County Commissioners shall be interested, directly or indirectly, in any property purchased for the use of the county, or in any purchase or sale of property belonging to the county, nor in any contract made by the county for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes; *provided*, that the board may purchase supplies for the county, not to exceed thirty dollars, in the aggregate, in any one month, from one of their number, when not to do so would be a great inconvenience, but the member from whom said supplies are

purchased shall not vote upon the allowance of said bill, and a violation of this Act shall be a misdemeanor, punishable by fine of not less than one hundred dollars and not exceeding five hundred dollars, and shall be cause for removal from office. *As amended, Stats. 1889, 35.*

When Suit Brought Against County.

2126. SEC. 24. No person shall sue a county in any case for any demand, unless he or she shall first present his or her claim or demand to the Board of County Commissioners and County Auditor for allowance and approval, and if they fail or refuse to allow the same, or some part thereof, the party feeling aggrieved may sue the county; and if the party suing recover in the action more than the said board allowed, or offered to allow, said board and Auditor shall allow the amount of said judgment and costs as a just claim against the county; but if the party suing shall not recover more than the board and Auditor shall have offered to allow him or her, then costs shall be recovered against him or her by the county, and may be deducted from such demands.

Unaudited Claims, When Presented.

2127. SEC. 25. All unaudited claims or accounts against any county in this state, shall be presented to the Board of County Commissioners of said county, duly authenticated, within six months from the time such claims or accounts become due or payable; *provided*, nothing contained in this section shall be so construed as to prevent the presentation and auditing of any claim now due against any county in this state, at any time within nine months from the passage of this Act.

Champion v. Sessions, 1 Nev. 478.

Provisions of Last Section Complied With.

2128. SEC. 26. No claim or account against any county in this state shall be audited, allowed, or paid by the Board of County Commissioners, or any other officer of said county, unless the provisions of the last preceding section are strictly complied with.

Rejected Claims.

2129. SEC. 27. No claim which has once been presented and rejected, shall ever again be considered or allowed by the same, or any subsequently elected or appointed Board of County Commissioners of the same county.

Seal.

2130. SEC. 28. The seal of the county shall be the seal of the Board of County Commissioners.

Oaths.

2131. SEC. 29. The Commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their offices.

Tie Vote.

2132. SEC. 30. When a majority only of the members shall be present at the meeting of the board, in case of a tie vote on any question, it shall be postponed to a subsequent meeting.

Repeal.

2133. SEC. 31. An Act of the Legislative Assembly of the Territory of Nevada, entitled "An Act creating Boards of County Commissioners, and defining their duties," approved November twenty-eighth, one thousand eight hundred and sixty-one [p. 125], and all other parts of Acts in conflict with, or inconsistent with the provisions of this Act, are hereby repealed.

An Act to fix the number and limit the compensation of County Commissioners.

Approved March 1, 1883, 96.

Number in Any County.

2134. SECTION 1. Hereafter each Board of County Commissioners of the several counties of this state shall consist of three members; and not more than three County Commissioners shall be elected or appointed to such office in any county of this state.

Copeland v. Woodbury, 17 Nev. 337.

Compensation.

2135. SEC. 2. No County Commissioner hereafter elected, or appointed, shall receive as compensation for his services as such Commissioner an amount to exceed nine hundred (\$900) dollars per annum.

Who Not Affected.

2136. SEC. 3. This Act shall not be so construed as to limit the number or affect the compensation of County Commissioners now holding office by virtue of election or appointment.

An Act authorizing the Board of County Commissioners of the several counties of this state to apportion the county revenues.

Approved March 10, 1865, 376.

Special Application.

2137. SECTION 1. The Boards of County Commissioners in the several counties of this state shall apportion all the moneys coming into the county treasury, or so much thereof as is not by law set aside into special funds, as follows: Two-thirds shall go into the general county fund; one-sixth, or so much thereof as may be necessary, shall go into the indigent sick fund; and one-sixth, or so much thereof as may be necessary, shall go into the contingent fund, to defray the contingent expenses of the county. Said apportionment shall be made by an order entered upon their records, at the time the tax levy shall be made each year; *provided*, that in all counties polling at the last general election preceding the passage of this Act, more than six hundred and twenty-five votes, and not exceeding seven hundred and twenty-five votes, to be determined by the vote cast for Member of Congress, one-fourth, or so much thereof as may be necessary, shall go into the contingent fund; one-fourth, or so much thereof as may be necessary, shall go into the indigent sick fund, and the remainder into the general fund.

As amended, Stats. 1899, 40.

See Stats. 1891, 126, for counties casting 2,400 votes or more in 1890.

Not to Interfere With Special Fund.

2138. SEC. 2. Nothing in this Act shall be so construed as to authorize the said board to disturb, or in any manner to interfere with any special fund which has been or which may hereafter be created by law.

Humboldt Co. v. Churchill Co., 6 Nev. 30.

Duty of Treasurer.

2139. SEC. 3. It shall be the duty of the County Treasurers of the several counties of this state to apportion and pay into the funds, as directed by said Board of County Commissioners, all moneys coming into their hands.

Flack v. Com. of Washoe Co., 1 Nev. 460; Webster v. Fish, 5 Nev. 190.

An Act amendatory of and supplemental to an Act entitled "An Act authorizing the Board of County Commissioners of the several counties of this state to apportion the county revenues," approved March tenth, eighteen hundred and sixty-five.

Approved February 21, 1866, 74.

Unlawful to Pay Fees, etc., Out of Contingent Fund.

2140. SECTION 1. It shall not be lawful to pay, or order to be paid, any

fees, per diem, or salary of any county officer or County Commissioner, out of the contingent fund of any county of this state, created by "An Act authorizing the Board of County Commissioners of the several counties of this state to apportion the county revenues," but such contingent fund shall only be applied to the payment of the legitimate contingent expenses of said counties.

Misdemeanor.

2141. SEC. 2. Any County Commissioner who shall order the payment of any such fees, per diem, or salary, out of said contingent fund, and any County Auditor who shall draw his warrant on such contingent fund for the payment of such fees, per diem, or salary of any County Commissioner or other county officer, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than five hundred dollars, and be removed from office.

An Act supplementary to an Act entitled "An Act to create a Board of County Commissioners in the several counties of the state, and to define their duties and powers," approved March eighth, eighteen hundred and sixty-five.

Approved February 19, 1867, 59.

When County Commissioners to Advertise Contracts.

2142. SECTION 1. In letting all contracts of any and every kind, character, and description whatever, where the contract in the aggregate amounts to five hundred dollars or more, the County Commissioners shall advertise such contract or contracts to be let, stating the nature and character thereof—and when plans and specifications are to constitute part of such contract, it shall be stated in the notice where the same may be seen—in some newspaper published in their county, for the period of thirty days; in case the contract be for constructing any public building, then the advertisement shall be in that paper published in the county which is nearest the selected location for such building; and in case there shall be no newspaper published in their county, then by posting notices of the same in five of the most conspicuous and public places in their county for the same period of time. All such contracts shall be let to the lowest responsible bidder, subject to the provisions of the twenty-third [Sec. 2125] section of the Act to which this is supplementary.

Sadler v. Com. Eureka Co., 15 Nev. 39.

An Act in relation to county contracts.

Approved March 16, 1895, 88.

County Contracts.

2143. SECTION 1. No member of any Board of County Commissioners within this state, shall be allowed to vote on any contract which extends beyond his term of office.

Penalty.

2144. SEC. 2. Any County Commissioners violating section one of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined a sum not less than one hundred nor exceeding five hundred dollars, or three months in the county jail, or both.

An Act authorizing Boards of County Commissioners of any county in this state to institute and maintain suit against persons, firms, companies, associations or corporations depositing sawdust in any river or stream of this state, and providing for the levy of a tax to pay the expenses of the same.

Approved March 5, 1887, 125.

Empowered to Institute Suit.

2145. SECTION 1. The Board of County Commissioners of any county in this

state are hereby authorized and empowered to institute and maintain suit in any court of competent jurisdiction against any person, firm, association or corporation depositing sawdust in any river or stream, the waters of which run partly or wholly in this state.

May Levy Tax.

2146. SEC. 2. The Boards of County Commissioners of any and all counties of this state are hereby authorized and empowered to levy annually such tax as in their discretion may be necessary to carry out the provisions of this Act.

An Act to regulate the presentation and auditing of demands against counties.

Approved March 13, 1887, 115.

Accounts Sworn To.

2147. SECTION 1. Accounts presented against a county must be sworn to by the claimant, or some one in his behalf, before the County Auditor, or some other officer authorized by law to administer oaths; and at the request of the claimant, the Auditor shall issue a certificate and deliver the same to the claimant, showing the amount allowed, and out of what fund payable. No more than one certificate shall be issued upon the same allowance, unless the same be plainly marked or shown on the face thereof to be a duplicate certificate. No fee shall be allowed or charged by the County Auditor for any service as herein provided to be rendered by the Auditor, except as follows: For swearing the claimant, when the demand exceeds fifty dollars, fifty cents; and for issuing the certificate, when the amount allowed exceeds said sum of fifty dollars, one dollar.

An Act providing for the publication of all bills allowed by the Boards of County Commissioners in this state.

Approved February 1, 1893, 13.

To Publish Claims Allowed.

2148. SECTION 1. The County Commissioners of the different counties in this state shall cause to be published in some newspaper, published in their respective counties, the amount of all bills allowed by them, together with the names of the persons to whom such allowances are made; *provided*, that in counties where there are no papers published the Board of County Commissioners shall cause to be posted by the Clerk of said board, at the door of the court house in such county, the allowances provided for in this Act.

Price of Printing.

2149. SEC. 2. The amount paid for such publication shall not exceed the sum of one dollar per square of ten lines, and the publication shall not extend beyond a single insertion.

Repeal.

2150. SEC. 3. An Act entitled "An Act providing for the publication of bills allowed by the Boards of County Commissioners in this state," approved March 1, 1883 [p. 86], and all Acts amendatory thereof and supplementary thereto passed and approved prior to the year 1893, are hereby repealed.

An Act authorizing Boards of County Commissioners to grant leave of absence to county officers.

Approved March 6, 1893, 104.

Leave of Absence, How Granted.

2151. SECTION 1. The Board of County Commissioners in any county of this state is hereby authorized and empowered to grant leave of absence to any county

officer, authorized to appoint a deputy, for a period not exceeding six months, if in the discretion of said board such a cause [course] appears proper.

Application for Leave of Absence.

2152. SEC. 2. The officer desiring leave of absence shall first make an application in writing to the Board of County Commissioners for such leave, and a copy of such application shall be published in some newspaper of the county at least one month previous to the granting of such leave. If there be no newspaper published in the county, copies of said application shall be posted in at least three public places in the county. Said publication or posting shall be at the expense of the applicant.

Form of Application.

2153. SEC. 3. Such application shall contain the name of a competent deputy who is to be appointed by the officer applying for leave of absence, and who shall serve without expense to the county or state.

An Act relating to the support of the poor.

Approved November 29, 1861, 178.

Commissioners to Superintend.

2154. SECTION 1. The Boards of County Commissioners of the several counties of this state are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Relatives to Support in Certain Cases—Intemperance.

2155. SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they, or either of them, be of sufficient ability; and every person who shall fail to support his or her father, grandfather, mother, grandmother, child, grandchild, sister, or brother, when directed by the Board of Commissioners of the county where such poor person shall be found, whether such relatives reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the County Commissioners for the use of the poor, as aforesaid, before any Justice of the Peace, or any court having jurisdiction; *provided*, that when any person becomes a pauper from intemperance, or other bad conduct, he shall not be entitled to any support from any relation, except parent and child.

Relatives Called Upon for Support.

2156. SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called upon, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grandchildren of such poor persons shall be called on, and then the grandparents; but married females, whilst their husbands live, shall not be liable to a suit, except that in cases where the grandchildren shall become paupers, the grandparents shall not be liable for but one-half the amount of such charge, or vice versa.

County Support.

2157. SEC. 4. When any poor person shall not have relatives in any county in this state, as are named in the preceding section, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the County Commissioners may either make a contract for the necessary

maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

County Commissioners to Apprentice Minors.

2158. SEC. 5. When a minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations, as aforesaid, are unable, or refuse, to support such minor, it shall be the duty of the County Commissioners to bind such minor as an apprentice, to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects, be to the tenor and effect as required in the Act concerning apprentices, and in the absence of such law, in such manner as they shall deem for the best interests of said minor.

Sick Paupers—Death and Burial—Allowance.

2159. SEC. 6. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick in any county of this state, not having money or property to pay his board, nursing or medical aid, it shall be the duty of the Commissioners of the proper county, on complaint being made, to give, or order to be given, such assistance to such poor person as they may deem just and necessary; and if such sick person shall die, then the said Commissioners shall give, or order to be given, to such person, a decent burial; and the said Commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

Satisfactory Evidence of Residence.

2160. SEC. 7. When an application is made by any pauper to the Board of County Commissioners of any county in this state, for relief, it shall be necessary for said Commissioners to require of said pauper satisfactory evidence that he or she has been a resident of said county for six months immediately preceding the day upon which such application is made, or if such is not the case, satisfactory evidence in regard to where said pauper last resided for six months prior to arrival in the county where such application is made. *As amended, Stats. 1867, 116.*

When Pauper Entitled to Relief—Temporary Relief—Pauper to Be Removed.

2161. SEC. 8. When application is made by any pauper to the Board of County Commissioners aforesaid, and it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this Act, said pauper shall be entitled to all of the relief provided by this Act; but if, on the contrary, it shall appear to the satisfaction of said board, that such pauper has not been a resident of said county agreeable to the provisions of the foregoing section, but that said pauper, previous to removing to the said county where said application is made, was a resident of some other county of this state, said board shall provide temporary relief for said pauper, and immediately notify the Board of County Commissioners of the county where said pauper last had a residence for six months, and said notice shall be in writing, duly attested by the Clerk of the Board of County Commissioners, and deposited in the postoffice, addressed to the Board of County Commissioners of said county, and it shall be the duty of the Board of County Commissioners receiving said notice to cause said pauper to be immediately removed to their county, and pay a reasonable compensation for the temporary relief afforded, and if said Board of Commissioners neglect or refuse to remove said pauper, the county affording relief shall have a legal claim against said county for all relief necessarily furnished, and may recover the same in a suit at law. *As amended, Stats. 1867, 117.*

When Not Entitled to Relief.

2162. SEC. 9. After service of such notice, as aforesaid, no pauper shall be

entitled to relief from such county, unless the County Commissioners shall deem it absolutely necessary.

County Workhouses.

2163. SEC. 10. The Board of County Commissioners of any county in this state may, if they think proper, cause to be built or provided in their respective counties, workhouses for the accommodation and employment of such paupers as may, from time to time, become a county charge, and said workhouse and paupers shall be under such rules and regulations as said Board of Commissioners may deem proper and just.

Penalty for Transporting Paupers.

2164. SEC. 11. If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county in a civil action before any court having jurisdiction of the same.

An Act regulating the powers and duties of the Board of County Commissioners of the several counties within this state in certain cases.

Approved March 6, 1879, 72.

Delivery of Prisoners to Jails, etc.—Mileage of Officers.

2165. SECTION 1. The Board of County Commissioners of the several counties within this state are hereby authorized and directed, from and after the passage of this Act, to examine, audit and allow to any Sheriff or Constable, in any one of said counties, the actual fare paid by such officer in the conveyance or transportation of any one or more prisoners, that may be committed to the county jail, by the Justice of the Peace of such county or counties, in addition to the amount now allowed by law for the safe keeping and delivering of prisoners to the county jail; *provided*, such officers shall upon the presentation of their bill or bills, for the fare actually paid in pursuance of the provisions of this Act, such bill or bills shall be accompanied with a receipt showing the amount paid, and by what conveyance said prisoner or prisoners was conveyed to said county jail, whether by the means of railroad, stage-coach, or private conveyance; and in no case shall a greater sum be allowed for a private conveyance than is usually charged by stage conveyance for a similar distance, such amount shall always be determined by the Board of County Commissioners, in accordance with their best judgment and information.

County Auditors to Draw Warrants.

2166. SEC. 2. The County Auditor of the several counties within this state, are hereby authorized and directed to draw his warrant upon the general fund for the payment of such sum as may be allowed by the County Commissioners from time to time, in accordance with the provisions of section one of this Act, and the County Treasurer of the several counties is hereby directed to pay the sum upon presentation in their regular order.

An Act to authorize the County Commissioners in the several counties in this state to loan or transfer surplus money from one fund to the other.

Approved February 9, 1881, 32.

To Transfer Surplus Money.

2167. SECTION 1. The County Commissioners in the several counties in this state are hereby authorized and empowered to transfer any surplus money which may be in any of the county funds of the respective counties (except the school fund) from one or more of said funds, to another or others, and transfer the same

back to the fund or funds from which said surplus money was taken, at such times and in such manner as, in the judgment of said Commissioners, the best interest of the county may require. *As amended, Stats. 1887, 111.*

State v. Storey Co., 17 Nev. 96.

An Act creating Boards of Examiners in the several counties of this state.

Approved January 31, 1881, 21.

County Board of Examiners.

2168. SECTION 1. The Board of County Commissioners and the County Auditor of each county in this state are hereby created a Board of Examiners.

Auditor's Duties—Commissioners to Count Money.

2169. SEC. 2. The County Auditor in each county in this state shall, in the months of January, April, July, and October, of each year, in counties having polled a vote at the last general election prior to the passage of this Act of less than twelve hundred votes, and once a month in counties having polled, at said election, twelve hundred or more votes, furnish the board with a statement of the amount of money, securities, and other property in the custody of the County Treasurer, and shall, in company with the Board of Commissioners, count, examine, and inspect the same and carefully determine whether the funds, securities, and property of the county are all on hand and properly protected in the full amounts belonging to the county, and the County Treasurer shall assist and, as far as possible, facilitate such examination.

Neglect of Duty, How Punished.

2170. SEC. 3. If any Board of Commissioners, or any member of any Board of Commissioners, or the County Auditor shall refuse or neglect to comply with the provisions of this Act, or if the County Treasurer shall, in any way, prevent such examination, such person so neglecting or violating the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred dollars, and may be imprisoned at the discretion of the court, and shall be removed from office.

An Act concerning the allowance and payment of demands against the several counties of this state and barring the payment thereof in certain cases.

Approved February 4, 1881, 25.

County Funds Assigned to Payment of Claims—Reallowance—Debarred from Payment.

2171. SECTION 1. That when there shall be in the general, school, contingent, indigent sick, or road funds of any county in this state, any sum or sums of money which have been in such fund for the term of two years or more by reason of the failure or neglect of the owner or owners of such indebtedness to demand the payment of the same, such sum or sums of money shall be applied to the payment of the more recent indebtedness of such county payable out of such fund. And in case the owner or owners of such allowance or allowances shall demand such sum or sums of money within six years from the date of the original allowance of such sum or sums of moneys, and after such sum or sums of money have been so applied, the Board of County Commissioners of such county may again allow such demand for the amount originally allowed, without interest, and no more, and any such demand, so reallowed shall be paid in the order of its reallowance, out of the fund originally accountable therefor, in case there be any such fund, and in case there shall at said time be no such fund, then such demands shall be paid in the order of its reallowance, out of the general fund of such county; but should the payment of such sum or sums of money not be demanded within six years from and after the original allowance of such demand or demands, then such indebtedness shall not be reallowed by such Board of County Commission-

ers, and the payment thereof shall be forever barred; *provided*, that nothing in this Act shall be so construed to affect or repeal any Act providing for the redemption or funding of the indebtedness of any county in this state.

An Act to authorize the County Commissioners of the several counties in this state to offer and pay rewards in certain cases.

Approved March 3, 1869, 114.

Rewards in Certain Cases—Proviso—Order to Be Made.

2172. SECTION 1. Hereafter, when it shall come to the personal knowledge of the County Commissioners, or a majority thereof, of any of the counties in this state, that the crime of murder has been committed in said county, or whenever one or more of the residents of the county shall state in writing and under oath that such crime has been committed in the county, and that, to the best of their knowledge and belief, the person or persons, whether known or unknown, committing the crime, has or have not, at the time of making such statement, been apprehended or taken into custody, and the board, from such statement or other evidence, believe that a murder has been committed, and that the offering of a reward would tend to cause the arrest of the perpetrator or perpetrators of the crime, the Board of County Commissioners, or a majority thereof, are authorized to offer a reward for the arrest and safe delivery of such criminal or criminals to the proper officers; *provided*, that in no case shall a reward be offered, as provided in this Act, for more than five hundred dollars in each case; and such offer shall expire so soon as the Board of County Commissioners offering the reward shall make an order to that effect, which they are authorized and empowered to do at any general session, or at a special session convened without notice, and shall cause the same to be entered in their minutes of proceedings. No reward shall be offered as herein authorized until after an order shall have been made by the board and entered in the minutes of their proceedings, reciting the name of the person or persons murdered, and the amount of the reward offered, and the order shall have been approved by the board and attested in the usual manner of attesting the minutes of their proceedings in other cases.

Rewards, How Paid.

2173. SEC. 2. All claims for rewards, as provided for in the preceding section, shall be allowed and paid as other claims against the county, under the direction of the County Commissioners, as provided for by law.

An Act providing for the government of the towns and cities of this state.

Approved February 26, 1881, 68.

Powers of Commissioners—Boundary—Suits—Tax Levy—To Lay Out Streets—Condemn Property—Fire Regulations—Licenses, etc.

2174. SECTION 1. In addition to the powers and jurisdiction conferred by other laws, the Boards of County Commissioners of this state shall have the following with regard to the management of the affairs and business of any town or city in their respective counties:

First—To fix and define the boundary of such town or city, within which the jurisdiction herein conferred shall be exercised; *provided*, that in the case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation, but any change of such boundaries may be made by the board upon petition of a majority of the taxpayers thereof.

Second—To institute and maintain any suit or suits in any court or courts necessary, in their judgment, to enforce and maintain any right or rights of said town or cities. All such suits shall be instituted and prosecuted in the name of

the Board of County Commissioners for the use and benefit of the inhabitants of said town or city, and shall be entitled accordingly in all pleadings or proceedings.

Third—To levy a tax not exceeding one and one-half per cent per annum upon the assessed value of all real and personal property (including proceeds of mines), situated in said town or city, made taxable by law for state and county purposes.

Fourth—To lay out, extend, and alter the streets and alleys in said town or city, and provide for the grading, draining, cleaning, widening, lighting or otherwise improving the same; also, to provide for the construction, repair and preservation of sidewalks, bridges, drains and sewers, and for the prevention and removal of obstructions from the streets and sidewalks of said town or city; *provided*, that said board may, in its discretion, assess the cost of improving any street or building, or repairing a sidewalk, to the owner or owners of the property in front of which said street, or sidewalk, or proposed sidewalk may be, and may make such cost of improvement, repairs or building a lien upon such property.

Fifth—To condemn property for the use of the inhabitants of said town or city in the manner hereinafter provided.

Sixth—To provide for the prevention and extinguishment of fires, and organize, regulate, establish and disband fire companies or fire departments in said city or town, and to provide for the payment thereof and appointment and payment of officers thereto; *provided*, that all such payments shall be made from the separate fund of the city or town where service is performed or required; *and, provided further*, that the Chief Engineer of the fire department shall receive compensation in a sum not to exceed one hundred and fifty (\$150) dollars per month; the Assistant Chief Engineer of the fire department not to exceed one hundred and twenty-five (\$125) per month, and all other employees of the fire department not to exceed one hundred (\$100) per month; *and, provided further*, that a majority of the Board of County Commissioners shall name and appoint two-thirds of all such officers and employees, and the minority thereof shall name and appoint one-third.

Seventh—To regulate the storage of gunpowder and other explosive or combustible materials within said town or city.

Eighth—To determine what shall be deemed nuisances in such town or city, and to provide for the punishment, prevention and removal of the same.

Ninth—To fix and collect a license tax upon and regulate all places of business and amusement so licensed as follows, to wit: Artisans, artists, assayers, auctioneers, bakers, bankers, barbers, billiard tables, boiler makers, boot and shoe makers, bowling alleys, brokers, factors and general agents, commission merchants, circus, caravan or menagerie, concerts and other exhibitions, dance houses, saloons or cellars, express and freight companies, foundries, gaming, hawkers and peddlers, hay yards, wagon yards and corrals, hotels, boarding houses and lodging houses, illuminating gas, electric light, insurance agents, job wagons, carts and drays, laundries, livery and sale stables, lumber yards, manufacturing of liquors and other beverages, manufacturers of soap, soda, borax or glue, markets, merchants and traders, newspaper publishers, pawnbrokers, restaurants and refreshment saloons, bar-rooms, shooting galleries, skating rinks, solicitors, drummers, mercantile agents, stage and omnibuses, stock brokers, telegraph companies, theaters and melodeons, undertakers, wood and coal dealers, having due regard to the amount of business done by each firm or person so licensed; to license, tax and regulate, prohibit and suppress all tippling houses, dram shops, public card tables, raffles, hawkers, peddlers and pawn brokers, gambling houses, disorderly houses, and houses of ill-fame; *provided*, that in all unincorporated cities and towns in this state the Boards of County Commissioners shall have power to fix and collect a tax upon the following places of business and amusements, and none other, as follows, to wit: Circus, caravan or menagerie, concerts, theatrical performances, melodeons and other exhibitions, dance houses, wholesale liquor

merchants, brewers, manufacturers of liquors and beer, saloons, bars, bar-rooms or cellars, gaming and gambling houses, hawkers and peddlers, junk shops, pawn-brokers, auctioneers, solicitors, drummers and mercantile agents; to levy and collect an annual tax on all dogs owned or kept within the limits of said town or city, and to provide for the extermination of all dogs for which tax shall not have been paid, and to prohibit the keeping of hogs or the running at large of goats, cows or other animals within the limits of said town or city; to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified.

Tenth—To provide for the issuance of all licenses in this Act mentioned, or authorized to be issued, and to fix the terms on which and the sums for which the same shall be issued.

Eleventh—To prevent, punish and restrain any disorderly conduct within said town or city; to establish and maintain a Board of Health.

Twelfth—To hold, manage, use and dispose of the real and personal property of said town or city, and collect all dues and demands belonging to or coming to the same, but no sale of any such property shall be made until after it be appraised by three appraisers, taxpayers of said city or town, at the actual market value, nor shall it be sold for less than three-fourths of such appraised value.

Thirteenth—To fix and prescribe the punishment for the breach of any ordinance made or adopted by said Board of County Commissioners, to be enforced within said town or city, but no fines shall be imposed for one offense in a sum greater than five hundred (\$500) dollars, and no term of imprisonment shall be more than six months, but in lieu of imprisonment any person committed for punishment may be made to work on any public work in said town or city, and to that end a chaingang may be formed, continued and operated.

Fourteenth—To pass or adopt all ordinances, rules and regulations, and do and perform all other acts and things necessary for the execution of the powers and jurisdiction by this Act conferred; *provided*, that all ordinances of said town or city in force at the date of the assumption by said Board of County Commissioners of the powers and duties by this Act conferred or imposed, and not inconsistent therewith, shall remain in full force and be enforced until changed or repealed by such board; *and provided further*, that no ordinance passed by said board shall be in force or effect until published for one week.

Fifteenth—To audit and allow all claims properly payable out of the funds of said town or city. Any property, real or personal, necessary for the public use of said town or city, or the inhabitants thereof, may be condemned and appropriated in the following manner: The Board of County Commissioners shall appoint one referee, and the claimant or claimants, or owner or owners of the property sought to be condemned shall appoint one referee, and in the event the two referees so appointed shall not agree in the valuation of the property, or the interest or interests claimed therein, then the two so appointed shall select a third referee, and the decision of the majority of such three, as to the valuation of the property, or the interest or interests therein, by them appraised, shall be reported to said Board of County Commissioners, and shall by them be regarded as final and binding, unless the party deeming himself aggrieved by the decision of such referees shall appeal therefrom to the district court of the proper county, within thirty days after notice of such decision shall have been served upon him; and upon the tender in gold coin of the sum named as the value of such property, interest or interests to the claimant or claimants, owner or owners thereof, or his or their attorney or agent, such property, or the interest or interests therein appraised, shall become and be the property of said town or city, and said Board of County Commissioners may, at any time after twenty days' notice, cause the Sheriff of the county to remove all persons and obstructions from such property, in case the same be real, and may take immediate possession of the condemned property whether the same be real or personal. In case the claimant or claimants, owner

or owners of property sought to be condemned as herein provided, shall refuse or neglect, when required by the Board of County Commissioners to appoint a referee to value such property, then said Board of County Commissioners shall constitute a Board of Appraisers of such property, and their valuation of the same shall be final and binding, subject to right of appeal as hereinbefore provided; but no act of condemnation of property, or of any claim or interest therein, as herein provided, shall be deemed or held as an admission on the part of said town or city, or the inhabitants thereof, of the legality of the asserted claim thereto or right therein; and in the condemnation of property, as in this Act provided, the referees or County Commissioners, as the case may be, shall consider whether the proposed improvement, for which said property is so condemned, will be of any benefit to the person or persons owning or claiming the said property or some interest therein, and if they find that the same will be a benefit to such person or persons, they shall estimate the value of such benefit to him or them, and deduct the amount thereof from the estimated value of the property, or interest therein, condemned. *As amended, Stats. 1889, 43.*

For condemnation of property, see Secs. 3918-3930.

Levy of Taxes—How Collected, etc.

2175. SEC. 2. Annually, at the time of assessing or fixing the amount of taxes for county purposes, said Board of County Commissioners shall (subject to restrictions of subdivision third, of section one of this Act), assess, fix, and designate the amount of taxes that should be levied and collected for city or town purposes on all real and personal property (including the proceeds of mines) assessable for state or county purposes within any town or city in their county, which said taxes shall be collected at the same time, in the same manner, and by the same officers as provided in the revenue laws of this state for the levying and collecting of state and county taxes, and said revenue laws shall, in every respect not inconsistent with the provisions of this Act, be deemed and held applicable to the levying and collecting of the taxes hereinbefore mentioned; and in all cases where said Commissioners, or the County Assessor, or District Attorney of said county, or any other officer, or any Judge, or Justice of the Peace of said county, is required or authorized by law to adopt or use any form appertaining to the assessment or collection of county taxes, he or they shall also adopt or use a similar form in relation to assessing, levying and collecting the taxes herein provided for, and may use the same in any book, paper or document in which he or they have used the first named form, and in filling up the blanks of said last named form there shall be inserted the name of said town or city, using the name by which it is commonly designated, or such name as will enable the inhabitants thereof to know that their town or city, as the case may be, is intended to be named in said book, paper or document; and all suits instituted to collect state or county taxes on real or personal property (including the proceeds of mines) assessed in said town or city, shall include the unpaid taxes herein authorized to be levied, and judgments therein rendered shall also include such taxes.

Taxes, Fines, Forfeitures, etc., Paid to Treasurer.

2176. SEC. 3. All taxes, fines, forfeiture or other moneys collected or received by any officer or person, under or by virtue of any of the provisions of this Act, shall be paid by the officer or person collecting or receiving the same to the County Treasurer of the county in which said taxes or moneys were collected or received, and said County Treasurer shall set the same apart as a fund to be used solely for the benefit of the town or city in which they were collected or received. He shall also enter the same upon his books to the credit of said town or city, and shall divide said fund into two equal portions, one to be designated as the general fund and the other as a redemption fund; and he shall not pay any money out of said general fund except upon warrants drawn upon him by the County Auditor of his county, nor pay any money out of said redemption fund

merchants, brewers, manufacturers of liquors and beer, saloons, bars, bar-rooms or cellars, gaming and gambling houses, hawkers and peddlers, junk shops, pawn-brokers, auctioneers, solicitors, drummers and mercantile agents; to levy and collect an annual tax on all dogs owned or kept within the limits of said town or city, and to provide for the extermination of all dogs for which tax shall not have been paid, and to prohibit the keeping of hogs or the running at large of goats, cows or other animals within the limits of said town or city; to fix and collect a license tax upon all professions, trades or business within said town or city not heretofore specified.

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Fourteenth—To pass or adopt all ordinances, rules and regulations, and do and perform all other acts and things necessary for the execution of the powers and jurisdiction by this Act conferred; *provided*, that all ordinances of said town or city in force at the date of the assumption by said Board of County Commissioners of the powers and duties by this Act conferred or imposed, and not inconsistent therewith, shall remain in full force and be enforced until changed or repealed by such board; *and provided further*, that no ordinance passed by said board shall be in force or effect until published for one week.

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or owners of property sought to be condemned as herein provided, shall refuse or neglect, when required by the Board of County Commissioners to appoint a referee to value such property, then said Board of County Commissioners shall constitute a Board of Appraisers of such property, and their valuation of the same shall be final and binding, subject to right of appeal as hereinbefore provided; but no act of condemnation of property, or of any claim or interest therein, as herein provided, shall be deemed or held as an admission on the part of said town or city, or the inhabitants thereof, of the legality of the asserted claim thereto or right therein; and in the condemnation of property, as in this Act provided, the referees or County Commissioners, as the case may be, shall consider whether the proposed improvement, for which said property is so condemned, will be of any benefit to the person or persons owning or claiming the said property or some interest therein, and if they find that the same will be a benefit to such person or persons, they shall estimate the value of such benefit to him or them, and deduct the amount thereof from the estimated value of the property, or interest therein, condemned. *As amended, Stats. 1889, 43.*

For condemnation of property, see Secs. 3918-3930.

Levy of Taxes—How Collected, etc.

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Taxes, Fines, Forfeitures, etc., Paid to Treasurer.

2176. SEC. 3. All taxes, fines, forfeiture or other moneys collected or received by any officer or person, under or by virtue of any of the provisions of this Act, shall be paid by the officer or person collecting or receiving the same to the County Treasurer of the county in which said taxes or moneys were collected or received, and said County Treasurer shall set the same apart as a fund to be used solely for the benefit of the town or city in which they were collected or received. He shall also enter the same upon his books to the credit of said town or city, and shall divide said fund into two equal portions, one to be designated as the general fund and the other as a redemption fund; and he shall not pay any money out of said general fund except upon warrants drawn upon him by the County Auditor of his county, nor pay any money out of said redemption fund

except in the maner specified in this Act; and when all claims payable from said redemption fund shall have been satisfied, then said fund shall cease, and any money therein remaining shall be transferred to the general fund. If at any time after creating a redemption fund there shall be more money in the general fund than is necessary to meet current or anticipated expenses, said Board of Commissioners shall direct the Treasurer to transfer such surplus to the redemption fund, and the same shall thereafter be used as other moneys belonging to that fund. *As amended, Stats. 1883, 51.*

Salaries, How Paid—Form of Warrant—Notice to Be Posted.

2177. SEC. 4. All salaries of officers mentioned in this Act, and all expenses incurred in carrying on any government herein provided for, shall be paid out of the general fund of the town or city, to the affairs of which said government relates. All claims for such salaries and expenses shall be presented to the Board of County Commissioners, who shall consider and allow or reject the same, in whole or in part, and a record of their action shall be entered upon their minutes. If allowed in whole or in part by a majority vote of all the members composing said board, the Clerk thereof shall certify the claims to the Auditor, who shall thereupon issue his warrant to the holder, substantially in the following form:

No. _____, 18____.
The County Treasurer of _____ county will pay to _____
the sum of _____ dollars, in gold coin, for (stating in general terms the nature
of the claim), and charge the same to the general fund of the (town or city
of) _____.

\$ _____, County Auditor.
He shall appropriately fill all blanks. Upon presentation of any warrant, the County Treasurer shall immediately pay the same if he has money in his hands sufficient therefor belonging to the fund upon which it is drawn; but, if he has not, he shall indorse on said warrant, "Not paid for want of funds," adding thereto the date of the indorsement and signing his name officially to the same; and thereafter he shall pay said warrant out of the first money applicable thereto coming into his hands. Before twelve o'clock on the first Monday in each month, the County Treasurer shall post a notice in a conspicuous place in his office, showing the number and amount of each outstanding warrant, if any, which there is money in the treasury to pay. On paying any warrant the Treasurer shall write across the face thereof, in red ink, "Paid," with the date of payment, and sign his name officially thereto, and said warrant, thus canceled, shall be sufficient voucher for the Treasurer for his official settlement, which settlement shall be made in time and manner as provided for settlement for county funds. The Chairman of the Board of County Commissioners shall, in addition to such settlement, once a month, examine the books and vouchers of the County Treasurer concerning the state of the finances in his hands in this Act mentioned, and report the result to the board, which report shall be spread upon the minutes of said board.

Action for Recovery of Rejected Claims.

2178. SEC. 5. The holder of any claim or demand in this Act mentioned, which has been rejected in whole or in part, may, within six months after the same has been so rejected, commence an action in any court of competent jurisdiction of the county for the amount of his claim, or the rejected part thereof, as the case may be. The Board of County Commissioners shall be the defendant named in said action, and the service of summons shall be made upon the Chairman or Clerk thereof. In case of final recovery by the plaintiff, the Board of Commissioners shall audit and allow his claim for the amount of the judgment recovered.

Funded Debt, Payment Of—Form of Evidence of Indebtedness—Funds, How Used.

2179. SEC. 6. In all cases where a town or city in any county of this state

has been incorporated by an Act of the legislature thereof, or of the late Territory of Nevada, or otherwise, or may be incorporated, and the same has been or may hereafter be disincorporated, and where at the time of such disincorporation there exists any funded debt or outstanding bonds, the Board of County Commissioners shall provide for the payment of the principal and interest of the same substantially in time, manner, and form as provided by law or ordinance existent touching the same at the time of disincorporation. If there be no such law or ordinance, all such claims shall be paid out of the redemption fund of said town or city, as hereinafter provided for the payment of other indebtedness. The Board of County Commissioners of such county shall take possession of all the books, papers, documents, money, credits, claims, demands, and other property of said town or city, and collect, hold, or dispose of the same for the use and benefit of the inhabitants thereof; and in case said town or city shall have been at the time of disincorporation involved in debt other than as above specified, said Board of Commissioners shall ascertain the amount thereof, and cause evidence of indebtedness bearing interest on the principal sum thereof from date, at the legal rate of interest per annum, to be issued to the holder of said indebtedness, which said evidences of indebtedness shall be in the following form, to wit:

"No. 18... \$.... This is to certify that the (designating the town or city by its name) is indebted to in the sum of dollars principal and dollars interest, payable out of the redemption fund of said; said principal sum of dollars to bear interest from this date at the legal rate per annum, principal, interest, and accruing interest payable in gold coin of the United States., Chairman of the Board of County Commissioners of county, Nevada., Clerk of county, Nevada."

All blanks to be appropriately filled; but no such evidence of indebtedness shall be issued upon any account, claim, demand, bond, warrant, scrip, or other instrument, unless the same be filed with the Clerk of the Board of County Commissioners within three months after the disincorporation of said town or city; and simultaneously upon issuance the account, claim, demand on which the same is issued shall be receipted, and the bond, warrant, scrip, or other instrument shall be canceled. The County Treasurer shall only use the money of said redemption fund for the payment of the preëxisting bonds or funded debt not otherwise provided for, as hereinbefore mentioned, and such evidences as shall be issued as last hereinbefore mentioned, and the interest thereon as in this Act provided. *As amended, Stats. 1883, 52.*

Coupon Bonds—Interest—Notice.

2180. SEC. 7. In all cases where towns or cities have issued interest-bearing coupon bonds, prior to the passage of the Act of which this is amendatory, and the same have matured and are now outstanding and unpaid, the County Treasurer shall, upon the presentation of said bonds and a demand made for the payment of the interest accrued thereon, pay the same; *provided*, that there is sufficient money in the redemption fund to do so. The Treasurer shall indorse the amount so paid upon the back of the bond, in red ink, as so much interest paid. He shall also take a receipt from the holder of said bond or bonds, which shall show the date that said money was paid, the amount so paid, the number of the bond, the date of issue and to whom issued. Said receipt shall be sufficient voucher for the County Treasurer in the settlement of his accounts. The interest on said bonds shall be due and payable at the same periods of time of the year that the coupons attached to said bonds were due and payable. Whenever at any time after the payment of the accrued interest on said outstanding bonds there shall be in said redemption fund the sum of five hundred dollars or more, it shall be the duty of said Treasurer to give ten days' public notice that sealed proposals, directed to him, will be received for the surrender of indebtedness payable from said fund, which sealed proposals shall be received by him at any time before the

next regular meeting of the Board of County Commissioners held after the giving of said notice. Said notice shall be given by publication thereof in some newspaper published in the county, if there be one; if not, then by posting such notice in five public places of the town or city, the funds of which it is proposed to use in making the redemption mentioned in such notice. *As amended, Stats. 1883, 111.*

Treasurer to Deliver Proposals to Board of Commissioners.

2181. SEC. 8. At the first regular meeting of the Board of County Commissioners after expiration of such notice, the said County Treasurer shall deliver to the board all of the sealed proposals received by him up to that date. Said Board of County Commissioners shall thereupon open all of said sealed proposals, examine the same, and cause copies thereof to be entered in the record of their proceedings, and shall accept the lowest bid or bids for the surrender of the indebtedness offered, to the extent of the sum mentioned in such notice; *provided*, that no bid shall be considered which is not accompanied with the evidence of indebtedness proposed to be surrendered. No bid for more than par value shall be accepted, nor shall any proposal be withdrawn after it has been delivered to the Treasurer.

Duties of Officers Relative to Acceptance of Bids.

2182. SEC. 9. When any bid or bids are accepted as provided in the last section, the Clerk of the Board of County Commissioners and County Treasurer shall each take a description of the evidences of the indebtedness to be redeemed, specifying the amount to be paid for each of the same, date, number and amount thereof, and make a record of the same in their respective offices, and thereupon the Board of County Commissioners shall direct said Treasurer to pay the indebtedness designated in the accepted bid or bids, and said Treasurer shall pay the same, and shall immediately cancel the evidences of indebtedness so paid by him by writing across the face thereof, in red ink, "Redeemed," adding thereto the time when the same was redeemed and the amount paid therefor; and shall sign the same officially. Such canceled evidence of indebtedness shall be sufficient vouchers for the County Treasurer in the settlement of his accounts. But, in case that any of the bonds that are offered for redemption shall be of a greater denomination than the amount of money in the redemption fund, the Treasurer shall, upon the presentation of said bond or bonds, pay over to the holder of the same the amount of money so advertised, and for which he shall take his receipt. He shall also indorse upon the back of said bond, in red ink, the amount of money so paid as being for so much on the principal of said bond, after which time said bond shall only bear interest upon the amount of the principal due thereon. Said receipts shall be sufficient vouchers for the County Treasurer in the settlement of his accounts, and shall show the date that said money was paid, the amount, and to whom paid; also the number of the bond, the date of its issue, and to whom issued. The bid or bids specified in section eight being equal, preference shall be given to those in which the greatest percentage is principal. That shall be deemed the lowest bid which offers the largest amount of indebtedness, including principal and interest, for the smallest percentage in amount of money. When two or more bids shall be equal in every respect, each shall be accepted, *pro rata*, as near as possible. The County Treasurer shall return, on demand, to the proper parties, all unaccepted bids, with the evidences of indebtedness which accompanied the same. This Act shall be in force and effect from and after its passage. *As amended, Stats. 1883, 112.*

Jurisdiction of Justices of the Peace.

2183. SEC. 10. Any Justice of the Peace within said town or city shall have jurisdiction of all violations of ordinances applicable thereto under the provisions of this Act, and may render final judgment, hold to bail, fine, or commit to prison any offender, in accordance with the provisions thereof. All commitments of imprisonment shall be directed to the Sheriff of the county, and all fees or

finest collected be paid to the County Treasurer of the proper county, to be by him distributed to the proper fund of said town or city.

Duties of District Attorney.

2184. SEC. 11. All prosecutions arising under the provisions of this Act shall be conducted by the District Attorney of the county, who shall collect such fees as may be provided by law or ordinance and pay the same to the County Treasurer, to be by him distributed to the proper fund. He shall also prosecute and defend all suits brought by or against the Board of County Commissioners under the provisions of this Act.

Chief of Police—Salaries Limited.

2185. SEC. 12. The Board of County Commissioners, for the purpose of carrying out the provisions of this Act, may appoint from the residents thereof, for each said town or city in their county, one Chief of Police and as many other peace officers as may be necessary, not exceeding seven. Said officers shall be ex officio collectors of all licenses and taxes, other than property taxes, to be collected for the use of said town or city; and shall exercise such other powers and perform such other duties, including police duties, as may be authorized, directed, or required by the Board of County Commissioners. Every such officer shall give bond, in ordinary form of official bonds, in such amount as may be designated by the Board of County Commissioners, and two-thirds of them shall be named and appointed by a majority of the board, and one-third by a minority. All fees and money collected by any such officer, under any law or ordinance, shall be by him paid to the County Treasurer, to be by him distributed to the proper fund of the city or town whence collected. And such officer shall receive for his services such sum as may be fixed by the Board of County Commissioners, not to exceed one hundred (\$100) dollars per month, except the Chief of Police, who shall receive not to exceed one hundred and fifty (\$150) dollars per month.

County Treasurer's Liability and Duties.

2186. SEC. 13. The County Treasurer in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and by virtue of the provisions of this Act, and shall be held liable on his official bond for the faithful performance of such duties, and shall pay any fee by him received by virtue of any law or ordinance into the treasury, to be apportioned to the fund of the town or city from which collected.

Clerk's Liability and Duties—Other Officers.

2187. SEC. 14. The County Clerk in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and by virtue of the provisions of this Act, and shall be held liable on his official bond for their faithful performance. He shall be ex officio Clerk of the Board of County Commissioners in the execution of the provisions of this Act, and shall keep a record of their proceedings thereabout, in books not used for other purposes. The District Attorney, County Auditor, County Assessor, and all other county officials, not specially exempted therefrom, in each of the counties of this state, shall perform the duties required or authorized to be performed by him and them, under and by virtue of the provisions of this Act, and shall be held liable on his or their official bond or bonds for the faithful performance thereof. No officer performing any duty under this Act, excepting the Board of County Commissioners, officers, and employees of any fire department or company, or peace officer thereunder authorized, shall demand or receive any compensation therefor. All such officers shall pay all fees or moneys by them received under any law or ordinance touching the provisions of this Act, in time and manner as by general law provided, to the County Treasurer of their respective counties, to be by him distributed to the fund of the proper town or city.

next regular meeting of the Board of County Commissioners held after the giving of said notice. Said notice shall be given by publication thereof in some newspaper published in the county, if there be one; if not, then by posting such notice in five public places of the town or city, the funds of which it is proposed to use in making the redemption mentioned in such notice. *As amended, Stats. 1883, 111.*

Treasurer to Deliver Proposals to Board of Commissioners.

2181. SEC. 8. At the first regular meeting of the Board of County Commissioners after expiration of such notice, the said County Treasurer shall deliver to the board all of the sealed proposals received by him up to that date. Said Board of County Commissioners shall thereupon open all of said sealed proposals, examine the same, and cause copies thereof to be entered in the record of their proceedings, and shall accept the lowest bid or bids for the surrender of the indebtedness offered, to the extent of the sum mentioned in such notice; *provided*, that no bid shall be considered which is not accompanied with the evidence of indebtedness proposed to be surrendered. No bid for more than par value shall be accepted, nor shall any proposal be withdrawn after it has been delivered to the Treasurer.

Duties of Officers Relative to Acceptance of Bids.

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fines collected be paid to the County Treasurer of the proper county, to be by him distributed to the proper fund of said town or city.

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Chief of Police—Salaries Limited.

2185. SEC. 12. The Board of County Commissioners, for the purpose of carrying out the provisions of this Act, may appoint from the residents thereof, for each said town or city in their county, one Chief of Police and as many other peace officers as may be necessary, not exceeding seven. Said officers shall be ex officio collectors of all licenses and taxes, other than property taxes, to be collected for the use of said town or city; and shall exercise such other powers and perform such other duties, including police duties, as may be authorized, directed, or required by the Board of County Commissioners. Every such officer shall give bond, in ordinary form of official bonds, in such amount as may be designated by the Board of County Commissioners, and two-thirds of them shall be named and appointed by a majority of the board, and one-third by a minority. All fees and money collected by any such officer, under any law or ordinance, shall be by him paid to the County Treasurer, to be by him distributed to the proper fund of the city or town whence collected. And such officer shall receive for his services such sum as may be fixed by the Board of County Commissioners, not to exceed one hundred (\$100) dollars per month, except the Chief of Police, who shall receive not to exceed one hundred and fifty (\$150) dollars per month.

County Treasurer's Liability and Duties.

2186. SEC. 13. The County Treasurer in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and by virtue of the provisions of this Act, and shall be held liable on his official bond for the faithful performance of such duties, and shall pay any fee by him received by virtue of any law or ordinance into the treasury, to be apportioned to the fund of the town or city from which collected.

Clerk's Liability and Duties—Other Officers.

2187. SEC. 14. The County Clerk in each of the counties of this state shall perform the duties required or authorized to be performed by him, under and by virtue of the provisions of this Act, and shall be held liable on his official bond for their faithful performance. He shall be ex officio Clerk of the Board of County Commissioners in the execution of the provisions of this Act, and shall keep a record of their proceedings thereabout, in books not used for other purposes. The District Attorney, County Auditor, County Assessor, and all other county officials, not specially exempted therefrom, in each of the counties of this state, shall perform the duties required or authorized to be performed by him and them, under and by virtue of the provisions of this Act, and shall be held liable on his or their official bond or bonds for the faithful performance thereof. No officer performing any duty under this Act, excepting the Board of County Commissioners, officers, and employees of any fire department or company, or peace officer thereunder authorized, shall demand or receive any compensation therefor. All such officers shall pay all fees or moneys by them received under any law or ordinance touching the provisions of this Act, in time and manner as by general law provided, to the County Treasurer of their respective counties, to be by him distributed to the fund of the proper town or city.

Commissioners to Hold Meetings—Special Meetings—Quorum.

2188. SEC. 15. The Board of County Commissioners of any county in this state, having jurisdiction of the affairs of any town or city, as in this Act provided, shall hold a regular meeting in the court house, at the county seat, at least once in each month, on a day previously fixed by them, for the purpose of transacting the business provided for in this Act, and shall continue in session from day to day until such business is completed. They may also hold special meetings, upon a call of the Chairman of the Board, or a majority of the members thereof. A majority of said board shall be necessary to constitute a quorum, and a vote of the majority of the whole board shall be necessary to carry any question. In any county whose inhabitants shall number twelve thousand or more, wherein the Board of County Commissioners transact the business required under the provisions of this Act, each member of such board shall receive, in addition to the compensation allowed by general law, the additional sum of forty (\$40) dollars per month.

Petition to Be Filed for Application of This Act.

2189. SEC. 16. None of the powers or jurisdiction in this Act, authorized or required, shall be exercised in any town or city until there shall have been filed in the Clerk's office of the county in which the same is situated, a written petition for the application of the provisions of this Act to said town or city, signed by a majority of the actual residents thereof, representing at least three-fifths of its taxable property, except in the case of any disincorporated town or city, or towns having a voting population of six hundred or more, no such nor any petition need be filed, but all the provisions of this Act shall immediately apply thereto. When a petition is filed the genuineness of its signatures and the qualification of its subscribers shall be established by the affidavits of reliable taxpayers of said town or city filed with such petition. *As amended, Stats. 1888, 117.*

Morgan v. Com. Eureka Co., 9 Nev. 360.

Act Repealed.

2190. SEC. 17. An Act entitled "An Act providing for the government of the towns and cities of this state," approved February twenty-first, eighteen hundred and seventy-three [p. 66], and all other Acts and parts of Acts in conflict with the provisions of this Act, are hereby repealed (*provided*, that any town which has availed itself of the provisions of an Act entitled "An Act to provide for the government of unincorporated towns in this state," approved March eighth, eighteen hundred and seventy-nine, and elects to remain under the provisions thereof, may continue its government thereunder, and the provisions of said Act, in respect to such town, shall remain in full force).

Act of March 8, 1879, 103, repealed, Stats. 1887, 51.

An Act to provide policemen in unincorporated cities, towns, and villages.

Approved March 11, 1885, 396.

Tax Authorized.

2191. SECTION 1. The Board of County Commissioners of the various counties of the State of Nevada are hereby empowered to levy and collect a tax, of not exceeding one-fourth of one per cent upon the assessed value of property within any unincorporated city, town, or village, for the benefit of the police department of such city, town, or village.

Boundaries Prescribed.

2192. SEC. 2. The Board of County Commissioners shall prescribe the boundaries within which such tax shall be collected; *provided*, that such boundaries shall not extend beyond the limits of such city, town, or village.

Tax Assessed and Collected.

2193. SEC. 3. Said tax shall be assessed and collected at the same time, and by the same officers, who assess and collect the state and county taxes, and under the same provisions of law, and shall be paid over to the County Treasurer.

Police Department Fund.

2194. SEC. 4. The County Treasurer shall keep said moneys in a separate fund, to be denominated the "police department fund."

Restriction.

2195. SEC. 5. No money shall be paid out of the police department fund, except by order of the County Commissioners.

Use of Police Fund.

2196. SEC. 6. The Board of County Commissioners shall have power to use the police department fund in paying the expenses of such police department within the boundaries of such city, town, or village, as prescribed by the said Commissioners.

Warrant Void, When.

2197. SEC. 7. Any warrant drawn on the police department fund, when there is not sufficient money in the treasury to pay the whole amount of such warrant, shall be void.

Intention of Act.

2198. SEC. 8. This Act is intended to provide for the payment of such liabilities provided for by this Act as may accrue after its passage, and which may be audited and allowed by the Board of County Commissioners, and incurred in maintaining a police department in any unincorporated city, town, or village, desiring to avail itself of the benefits of this Act, and not for the payment of any liabilities accruing before the passage of this Act.

Policemen, How Appointed—Special Policemen—Powers.

2199. SEC. 9. The Sheriff of any county is hereby empowered and required to appoint policemen not exceeding two in number, in any unincorporated city, town, or village, and to fix their compensation, not exceeding one hundred dollars per month; and said Sheriff may, at any time, remove such policeman, and appoint others in their place, whenever he shall deem it necessary for the public good. Such policeman shall serve within the limits of such unincorporated cities, town and villages, and in case of the appointment of more than one policeman, one shall serve in the daytime and the other at night; and said Sheriff shall have power to appoint such other special policemen as, in his judgment, the public safety may require, whose compensation shall not exceed four (4) dollars per day, or per night, as the case may be, and who shall continue to serve only during the pleasure of said Sheriff. Such policemen and special policemen shall, within the limits of such unincorporated cities, towns, and villages, be invested with all the power in making arrests which are now exercised, or which hereafter may be exercised by the peace officers according to the laws of this state, and within the limits of any unincorporated cities, towns, and villages, as aforesaid; and any such policemen or any peace officer may, on any day, and without a warrant, and at any time of the day or night, arrest a person or persons.

Majority of Electors to Petition.

2200. SEC. 10. The provisions of this Act shall not be in force, or have effect, in any city, town, or village, within this state, unless a majority of the qualified electors of such city, town, or village aforesaid, shall petition to the Board of County Commissioners of the county wherein such city, town, or village is situated, setting forth the following facts: First—That said petition contains the names of a majority of the resident electors of such city, town, or village, as the

case may be. Second—That they request the appointment of such policemen, and the levying of a tax of one-fourth of one per cent, as herein provided.

Duty of Commissioners to Levy Tax.

2201. SEC. 11. Upon the presentation of a petition, in compliance with the provisions of section ten of this Act, it shall be the duty of the Board of County Commissioners, in which county such city, town, or village is situated, to levy said tax as aforesaid, and to notify the Sheriff of said county in a written communication or otherwise, to make the appointment of one or more policemen, in accordance with the request of said petitioners.

An Act to provide for the improvement of streets and alleys in the unincorporated towns and villages in the State of Nevada.

Approved March 10, 1865, 355.

Petition for Improvement or Repairs.

2202. SECTION 1. Whenever it is deemed necessary to make any improvements or repairs upon any street or alley, in any unincorporated village or town within this state, such improvements or repairs shall be made upon complying with the requirements hereinafter set forth, to wit: A petition shall be presented to the Board of County Commissioners of the county in which such village or town is situated, setting forth in said petition—first, the street or alley where such improvements or repairs are to be made; second, full and complete specifications as to the nature and extent of such improvements or repairs, with sufficient certainty so as to enable parties to make bids or proposals for the work.

Extent of Petition.

2203. SEC. 2. Said petition must be signed by at least two-thirds of the property owners, or their agents, owning or having legal control of property fronting or being situated on said street or alley.

Notice of Improvement—Form of Notice.

2204. SEC. 3. Upon presentation of such petition, the Clerk of the Board shall file the same, and thereupon the board shall make an order, to be entered in the minutes of proceedings of said board, requiring the Clerk of said board to give notice to all persons interested, to appear before said board on a day certain, which shall be ten days from the date of the notice, to show cause why the prayer of said petition should not be granted, which notice shall be published in some newspaper published in the county, if there be one; if not, then by posting the same in three public places on the street or alley, within the limits of the proposed improvements. The notice shall be substantially in the following form, to wit:

"Notice is hereby given, that on the _____ day of _____, a petition was presented to the Board of County Commissioners of _____ county, praying for the improvement of _____ street (or alley), in the town of _____, in the nature and extent as follows, to wit: (Here set forth the specifications, as contained in the petition.) All persons interested are hereby notified to be and appear before the Board of County Commissioners, on the ____ day of _____, at ten o'clock a. m. of that day, to show cause, if any they have, why the prayer of said petitioners should not be granted.

"(Date.) Signed: _____,

"Clerk of the Board of Commissioners, _____ county."

Hearing of Objections.

2205. SEC. 4. On the day, and at the time mentioned in said notice, the board shall meet and hear any objections which may be made to the making of the improvements or repairs mentioned in the said petition; parties objecting, and other persons, may be examined under oath. If, upon such hearing, the

party or parties objecting do not own, represent, or have legal control of more than one-third of the value of all the property fronting or situated upon the street or alley within the limits of the proposed improvements, then it shall be the duty of the Board of County Commissioners to grant the prayer of said petitioners, and further proceed as hereinafter provided.

Proceedings Upon Granting Prayer.

2206. SEC. 5. If the board, by a majority vote, shall grant the prayer of said petition, they shall signify the same by an entry in their minutes to that effect. The Board of County Commissioners shall thereupon advertise in some newspaper published within the county, if there be one, if not, then by posting in three public places within the village or town, for bids or proposals to make such improvements or repairs; the bids or proposals shall be open for fifteen days from the date of the notice, and shall be directed to the Board of County Commissioners, and delivered to the Clerk of said board. Upon the day succeeding the fifteenth day from the date of said advertisement, the board shall proceed to open the bids or proposals, and the person or persons offering to do the work for the smallest amount of money shall be declared the lowest bidder, and his or their bid shall be accepted in preference to all other bids; the board may reject any and all bids; *provided*, that no contract shall be let within thirty days after the order is made by the board; *and, provided further*, that after said order is made, and specifications furnished for the work, any property owner may make such improvement, sidewalk, or grade, according to the order and specifications of the Board of County Commissioners, and such parties shall not be taxed for such improvements if the Board of Commissioners shall examine and accept said work.

Contract in Writing for Improvement.

2207. SEC. 6. Whenever any bid is accepted, the board shall make a contract, in writing, for the improvements and repairs, signed by the Board of Commissioners, and the party or parties whose bid or proposal is accepted.

Bid Accepted.

2208. SEC. 7. If the party or parties whose bid is accepted shall fail to sign said contract within five days after such bid is accepted, or contract drawn, the board may accept the next lowest bidder, and make contract with him, as aforesaid.

Special Assessment Roll.

2209. SEC. 8. Within twenty days after the execution of the contract, the board shall, from the last assessment roll of the county, make out a list of the property within the limits of the proposed improvements on said street or alley, properly ruled into columns, in which columns shall be contained respectively, the name of the owner of the property, the description thereof, its value, the rate of tax, and the total amount of taxes; which list, when completed, shall be signed by the board, or a majority thereof, and, when filed with the Clerk of said board, shall be known as the "Special assessment roll for street improvements."

Tax Levied.

2210. SEC. 9. The board shall, within the time specified in section eight of this Act, levy a tax upon the assessed value of the property contained in the "special assessment roll," sufficient to pay the contract price for making the improvements, and all costs and charges incurred subsequent to the filing of the petition mentioned in section one of this Act; the tax, when so levied, shall be entered by the Clerk of said board in the minutes of proceedings of said board.

Notice of Special Taxes.

2211. SEC. 10. Upon the filing of the special assessment roll, the Clerk of the board shall proceed to collect the taxes, and shall forthwith give notice, by publication in one newspaper, if there be any published in his county, and if

none be published, then by posting notices in three public and conspicuous places upon the street or alley where the improvements are being, or are to be made, that the special taxes for the improvement of ----- street, "or alley," are due and payable, and that if the same are not paid to the said Clerk within thirty days from the date of said notice, the law in regard to their collection will be strictly enforced.

Duty of Clerk Regarding Special Tax—Proviso.

2212. SEC. 11. Whenever the said tax is paid to the Clerk aforesaid, he shall mark the word "paid," and the date of payment, in the assessment roll, opposite the name of the person, or description of the property liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment, the amount of the tax, and description of the property assessed, but no Clerk of said board shall receive any taxes on real estate, for any portion less than the least subdivision entered on the special assessment roll; *provided, always*, that an owner of undivided real estate may pay the proportion of the taxes due on his interest therein.

Delinquent List.

2213. SEC. 12. On the day succeeding the expiration of the thirty days mentioned in section ten of this Act, the Clerk shall immediately ascertain the total amount of taxes then delinquent, and shall proceed to make out a list of all persons and property then owing taxes, verified by the oath of himself or deputy, which list shall be completed within ten days, and shall be known as the "delinquent list."

List Delivered to District Attorney.

2214. SEC. 13. The Clerk shall, within three days after completing said delinquent list, deliver the same to the District or Prosecuting Attorney of the county, and the said District or Prosecuting Attorney is hereby authorized and directed, immediately after the expiration of ten days from the time when such delinquent list shall have been delivered to him, to commence suit in the name of the people of the county of -----, in the State of Nevada, against the person so delinquent, and against the real estate and improvements assessed, so delinquent, and against all owners and claimants to the same, known or unknown; such action may be commenced before any Justice of the Peace or court in the county having jurisdiction thereof, and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, not regarding the location of the property as to the township or district, nor the residence of the person, as to town, township, county, or state.

Provisions of Revenue Law Made Applicable.

2215. SEC. 14. The provisions of the revenue law then in force, for the collection of delinquent taxes for state and county purposes, from the commencement of suit to the final sale of property under execution, and the redemption thereof, inclusive, when not inconsistent with the provisions of this Act, are hereby made applicable in all actions for the collection of delinquent taxes mentioned in this Act, unless otherwise specially provided for in this Act.

Moneys, How Paid Over.

2216. SEC. 15. All money received or collected by the Clerk and District or Prosecuting Attorney, for taxes mentioned in this Act, shall be paid over as directed by the Board of County Commissioners, and subject to their entire control.

Tax to Be a Lien.

2217. SEC. 16. Every tax levied under the provisions or authority of this Act is hereby made a lien against the property assessed, which lien shall attach from the date of the assessment, and shall not be satisfied or removed until the

taxes are all paid, or the property has absolutely vested in a purchaser under a sale for taxes.

Completion of Contract.

2218. SEC. 17. Whenever the improvement or repairs shall have been completed in accordance with the provisions and terms of the contract heretofore mentioned, it shall be the duty of the Board of Commissioners to audit and allow the contract price, and order the same to be paid.

Clerk to Receive No Fees.

2219. SEC. 18. For collecting and receiving the taxes, the Clerk of the board shall receive no fees or percentage whatever.

An Act to create a fire department fund.

Approved March 9, 1865, 323.

Tax for Fire Department.

2220. SECTION 1. The County Commissioners of the various counties of the State of Nevada are hereby empowered to levy and collect a tax not exceeding one-half of one per cent upon the assessed value of property within any unincorporated town for the benefit of the fire department in such town. *As amended, Stats. 1881, 110.*

Prescribe Boundaries for Tax.

2221. SEC. 2. The County Commissioners shall prescribe the boundaries within which such tax shall be collected; *provided*, that such boundaries shall not extend beyond the limits of such unincorporated town, village, or city.

Manner of Assessing and Collecting Tax.

2222. SEC. 3. Said tax shall be assessed in the same manner and subject to the provisions of the general laws for the assessment and collection of taxes, and collected at the same time and by the same officers who assess and collect the state and county taxes, and shall be paid over to the County Treasurer.

Fire Department Fund.

2223. SEC. 4. The County Treasurer shall keep said moneys in a separate fund, to be denominated the fire department fund.

Order of Commissioners.

2224. SEC. 5. No money shall be paid out of the fire department fund, except by order of the County Commissioners.

How Fund Used.

2225. SEC. 6. The County Commissioners shall use the fire department fund to aid in sustaining the fire companies within the boundaries of the town, as prescribed by the County Commissioners.

Warrant Not Drawn, When.

2226. SEC. 7. No debt is authorized by this Act to be made; and any warrant drawn on the fire department fund, when there is not sufficient money in the treasury to pay the whole amount of said warrant, shall be void.

Intended to Provide.

2227. SEC. 8. This Act is intended to provide for the payment of such liabilities provided for by this Act as may accrue after its passage, and may be audited and allowed by the County Commissioners, and incurred in maintaining fire companies in any unincorporated town, city, or village desiring to avail itself of the benefits of this law, and not for the payment of any liabilities accruing before the passage of this Act.

An Act authorizing Boards of County Commissioners to transfer surplus money in the several funds of unincorporated towns from one to the other.

Approved February 10, 1881, 34.

Commissioners to Transfer Moneys.

2228. SECTION 1. Whenever there shall be any surplus money in either the fire department, town, or police department funds, now or hereafter created by virtue of the laws of this state, in any unincorporated town, the Board of County Commissioners of the respective counties may, and they are hereby authorized and empowered, to transfer such surplus, or any portion thereof, from any one to either of said funds, in the manner and proportion best calculated, in the judgment of said Commissioners, to subserve and protect the credit of the other.

An Act to provide for the disincorporating of cities and towns incorporated under the laws of the Territory of Nevada.

Approved February 7, 1865, 132.

Commissioners to Have Power to Disincorporate—Liabilities.

2229. SECTION 1. The Board of Commissioners of each county shall have the power to disincorporate any city or town which may have been incorporated under the laws of this state, or the Territory of Nevada, upon the petition of a majority of the legal voters residing within the corporate limits of such city or town; but no corporation shall be dissolved, by virtue of this Act, unless it shall appear to the satisfaction of the board that notice has been given of the intended application for such dissolution of the corporation, by advertisement in a newspaper published in the city or town praying to be disincorporated; and in case no such newspaper be published in said city or town, then by written notice, posted in three of the most public places in said city or town, for at least thirty days prior to such application; nor until all the liabilities of such city or town have been paid or secured to the satisfaction of the Board of County Commissioners. *As amended, Stats. 1866, 95.*

No Rights Affected.

2230. SEC. 2. No dissolution of any corporation under this Act shall invalidate or affect any right, penalty, or forfeiture, accruing to such corporation, or invalidate or affect any contract entered into or imposed upon such corporation.

Trustees Appointed.

2231. SEC. 3. Whenever the Board of Commissioners shall dissolve any corporation, they may appoint three competent persons to act as Trustees for the corporation so dissolved.

Trustees to Take Oath.

2232. SEC. 4. The Trustees, before entering upon the discharge of their duties, shall take and subscribe an oath before some Judge or Justice of the Peace, that they will faithfully discharge the duties of their office, and shall, moreover, give bond, with sufficient sureties, to be approved by the Board of Commissioners, to the use of such disincorporated city or town, conditioned for the faithful discharge of the duties of their office.

To Prosecute and Defend Suits.

2233. SEC. 5. The Trustees shall prosecute to final judgment, and defend all suits instituted by or against the corporation, collect all money due the same, liquidate all lawful demands against the same, and for that purpose shall sell and convey any property belonging to such corporation, or so much thereof as may be necessary, and generally to do all acts required to bring to a speedy close all of the affairs of the corporation, and they shall make a report of their proceedings to the Board of County Commissioners at each session of the board.

To Pay Over and Make Settlement.

2234. SEC. 6. The Trustees shall pay over to the Board of Commissioners, and the Commissioners shall pay the same to the Treasurer, from time to time, such money as may come into their hands; and when they shall have closed the affairs of the corporation, shall make a final settlement thereof to the board, and deliver up all books, records, papers, deeds, and all other effects belonging to the dissolved corporation. Such Trustees shall receive for their services such compensation as the board shall deem reasonable.

Annual Revenue Paid to Board—Proviso.

2235. SEC. 7. If any city or town, disincorporated as aforesaid, have annual revenue accruing thereto, the same shall be paid to the Board of Commissioners by persons owing the same, and all moneys thus paid, as well as all moneys paid to the Trustees, shall be held and disposed of by the board for the benefit of such city or town, and may be applied by the board to any specific object, upon the petition of a majority of the taxable inhabitants of said city or town; *provided, always*, that all of the just and lawful debts, dues, and demands, against said corporation, shall have been first paid.

Moneys, How Apportioned.

2236. SEC. 8. All moneys arising from the collection of taxes, fines, penalties, and forfeitures shall be appropriated by the Board of County Commissioners toward the carrying out of those objects which, by this Act, are placed under their control and jurisdiction, and none others.

An Act to authorize the County Commissioners of any of the counties of the State of Nevada to purchase or construct telephone lines.

Approved March 14, 1899, 93.

County Commissioners Empowered to Acquire Telephone Lines.

2237. SECTION 1. The County Commissioners of any of the counties of this state are hereby authorized, upon there being filed with them a petition signed by two-thirds of the taxpayers of the county, requesting them so to do, to purchase or construct a telephone line, or lines, within the limits of the county, if in their judgment it would be to the interest of the county to do so, and to pay for the same out of the general fund of the county.

Title, How Vested.

2238. SEC. 2. The title to any telephone line or lines constructed or acquired by or under the authority of any Board of County Commissioners in this state as provided in this Act, shall be vested in said county, and under its control and management.

An Act limiting the power of certain county officers.

Approved March 3, 1887, 108.

None But Commissioners to Contract.

2239. SECTION 1. No county officer in any county in this state, except the Board of County Commissioners, shall contract for the payment or expenditure of any county moneys for any purpose whatever, or shall purchase any stores or materials, goods, wares or merchandise, or contract for any labor or service whatever, except the Board of County Commissioners, or a majority of them, shall order such officer to do the same.

An Act relating to Sheriffs.

Approved November 28, 1861, 103.

When Elected.

2240. SECTION 1. That there shall be elected at the annual election, in each

county in this state, a Sheriff, who shall hold his office for two years, and until his successor is elected and qualified; *provided*, the Sheriff elected at the special election of January next, shall hold his office until the first general election, and until his successor is qualified.

Oath of Office and Bond.

2241. SEC. 2. Before entering upon the discharge of his duties, each Sheriff shall take an oath of office, and give a bond to his county, in the penal sum of not less than ten nor more than fifty thousand dollars, with two or more sureties, residing in his county, to be approved by the Board of County Commissioners, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the County Auditor.

OFFICIAL BONDS IN GENERAL. See *State v. Kruttschnitt*, 4 Nev. 178; *Kruttschnitt v. Hauck*, 6 Nev. 163; *W. P. Co. v. Herrick*, 19 Nev. 34; *Alderson v. Mendes*, 16 Nev. 298; *State v. Laughton*, 19 Nev. 202; *State v. Wells*, 8 Nev. 105; *State v. Nevin*, 19 Nev. 162.

To Appoint Deputies—Oath of Deputy.

2242. SEC. 3. Each Sheriff shall have power to appoint, in writing, signed by him, one or more deputies, who are hereby empowered to perform all the duties devolving on the Sheriff of the county; and the Sheriff shall be responsible for all the acts of his deputy or deputies, and may remove such deputy or deputies at pleasure; but no Deputy Sheriff shall be qualified to act as such until he has taken an oath to faithfully and impartially discharge the duties of said office, which said oath shall be certified on the back of his appointment, and filed in the office of the County Auditor. The Sheriff may also require of his deputies such bonds as to him shall seem proper.

To Have Custody of Jail.

2243. SEC. 4. The Sheriff of each county shall have the custody of the jail or prison of his county, and the prisoners in the same, and shall appoint the keeper thereof, for whose conduct he shall be responsible, and whom he may remove at pleasure; and no Sheriff shall be allowed to practice law in any court of which he is an officer. *As amended, Stats. 1867, 64.*

Duties of Sheriff and Deputy.

2244. SEC. 5. It shall be the duty of Sheriffs and of their deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony, or breach of the peace, they may call upon the power of their county to aid in such arrest, or in preserving the peace.

Duty of Sheriff Regarding Court.

2245. SEC. 6. It shall be the duty of the Sheriff to attend in person, or by deputy, at all sessions of the district court in his county, and to obey all the lawful orders and directions of the same; to execute the process, writs, or warrants of courts of justice, judicial officers and Coroners, when delivered to him for that purpose. *As amended, Stats. 1873, 115.*

Writs and Orders to Be Indorsed.

2246. SEC. 7. When any process, writ, or order shall be delivered to the Sheriff to be served or executed, he shall forthwith indorse upon it the year, month, day, and hour of its reception, and shall give to the person delivering it, if required, on payment of his fee, a written memorandum signed by him, stating the names of the parties in the process or order, the nature thereof, and the time it was received. He shall also deliver to the party served a copy thereof, if required so to do, without charge to such party.

Execution of Process.

2247. SEC. 8. A Sheriff to whom any process, writ, order, or paper shall be

delivered, shall execute the same with diligence, according to its command, or as required by law, and shall return it without delay to the proper court or officer, with his certificate indorsed thereon of the manner of its service or execution, or, if not served or executed, the reasons of his failure. For a failure so to do, he shall be liable to the party aggrieved for all damages sustained by him on account of such neglect.

Liable to Creditor.

2248. SEC. 9. If the Sheriff to whom a writ of execution or writ of attachment is delivered, shall neglect or refuse, after being required by the creditor or his attorney to attach, or to levy upon, or sell, any property of the party charged in the writ which is liable to be attached or levied upon and sold, he shall be liable on his official bond to the creditor for the value of such property.

Liability for Collections.

2249. SEC. 10. If a Sheriff shall neglect or refuse to pay over on demand to the person entitled, any money which may come into his hands by virtue of his office, after deducting his legal fees, the amount thereof, with twenty-five per cent damages, and interest at the rate of ten per cent per month from the time of the demand, may be recovered by such person from him and the sureties on his official bond, on application, upon five days' notice to the court in which the action is brought, or the Judge thereof in vacation.

1. REFUSAL OF SHERIFF TO PAY—SEC. 10 CONSTRUED—LIABILITY OF SHERIFF AND HIS SURETIES. *Nash v. Muldoon*, 18 Nev. 404.
2. MISTAKE IN APPLICATION OF MONEY. *Giffin v. Smith*, 2 Nev. 374.
3. SHERIFF MUST SHOW AUTHORITY. *Keys v. Grannis*, 3 Nev. 548.
4. JUDICIAL SALES. *Dazet v. Landry*, 21 Nev. 291.
5. SHERIFF TO PAY PREFERRED CLAIM OUT OF SALE. *Alexander v. Archer*, 21 Nev. 22.
6. WRONGFUL SALE—SHERIFF AND JUDGMENT CREDITORS, WHEN LIABLE. *Streeter v. Johnson*, 23 Nev. 194.
7. ATTACHMENT MUST BE SERVED BY SHERIFF OF COUNTY WHERE PROPERTY IS SITUATED. *Sadler v. Tatti & Co.*, 17 Nev. 429.

Location of Office.

2250. SEC. 11. The Sheriff shall keep an office at the county seat of his county, which shall be kept open on all days except Sundays, from nine o'clock, forenoon, until five o'clock, afternoon.

Limit of Fees.

2251. SEC. 12. No Sheriff shall, directly or indirectly, ask, demand, or receive for any services or acts by him performed in pursuance of any duty of his office, any greater or more fees than he is allowed by law, on pain of forfeiting for such offense, to the party aggrieved, treble the sum so demanded or received, and his legal fees, together with costs of suit.

Sheriff Not to Purchase at Sale.

2252. SEC. 13. No Sheriff shall become the purchaser, nor procure any person to become the purchaser for him, of any property, real or personal, by him exposed to sale by virtue of any execution or other process; and all such purchases made by any Sheriff, or any person in his behalf, shall be absolutely null and void.

May Collect After Term of Office.

2253. SEC. 14. Any Sheriff, at the expiration of his term of office, having any execution or final process which he may have levied and not collected, shall be and hereby is authorized to proceed and collect such execution in the same manner as if his term of office had not expired.

Escape of Prisoners—Liability.

2254. SEC. 15. When any prisoner shall be committed to the county jail for

trial, or for examination, upon conviction for a public offense, or for disobedience to any writ, mandate, process or order of any court, such prisoner shall be actually confined in the jail until he is legally discharged; and if he be permitted to go at large out of the jail, except by virtue of a legal order or process, it shall be an escape, and the Sheriff or Jailer permitting it shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding ten thousand dollars.

Authority of, in Judicial Districts.

2255. SEC. 16. The Sheriff in any county in any judicial district in this state, to which any other county or counties in such district may be attached for judicial purposes, shall have power and authority to serve all process, writs, orders, or other papers issued or directed to him by the district court of his county, or the Clerk thereof, within any county or counties so attached, the same as if the said county or counties were not separate and distinct counties.

County of Washoe v. County of Humboldt, 14 Nev. 123; Sadler v. Tatti & Co., 17 Nev. 423.

When Not Liable for Damages.

2256. SEC. 17. No Sheriff shall be liable for any damages for neglecting or refusing to serve any civil process, unless his legal fees (and an indemnifying bond in cases where he has doubts as to the ownership of the property sought to be levied upon or attached, if the same shall be required by him) are first tendered him.

Service of Paper on Sheriff, How Made.

2257. SEC. 18. Service of a paper upon the Sheriff may be made by delivering it to himself in person, or by delivering it to one of his deputies, or to a person belonging to and in the office, during office hours, or, if no such person be there, by leaving it in a conspicuous place in the office.

An Act defining the duties of Sheriffs in relation to the filing and posting of licenses.

Approved March 6, 1893, 86.

Licenses to Be Posted.

2258. SECTION 1. The Sheriff of each county in the state shall, on the first Mondays of April, July, October and January, file with the Board of County Commissioners and post up in his office a statement showing the names of all persons, firms and corporations doing business in the county from whom licenses are collected, the nature and kind of said business, and the amount of license so paid.

An Act in relation to common jails, and the prisoners thereof.

Approved November 25, 1861, 41.

To Be Kept.

2259. SECTION 1. There shall be built, or provided, kept, and maintained in good repair, in each county, one common jail, at the expense of the county.

Commissioners to Supervise.

2260. SEC. 2. The County Commissioners shall have the care of building, inspecting, and repairing such jail, and shall, once every three months, inquire into the state thereof, as respects the security thereof, treatment and condition of the prisoners, and shall take all necessary precautions against escape, sickness, or infection.

Sheriff to Have Custody of Jail.

2261. SEC. 3. The Sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same personally, or by his deputy, or by a Jailer or Jailers, by him appointed for that purpose, for whose acts he shall be responsible, and shall furnish all necessary sustenance, bedding, clothing,

and fuel for the prisoners committed to his custody; and the County Commissioners are hereby required to allow him, out of the county treasury, all necessary costs, charges, and expenses thereof. *As amended, Stats. 1866, 189.*

BOARD OF PRISONERS—SHERIFFS HAVE NO RIGHT TO CONTRACT FOR. *Caughlin v. Com. Washoe Co., 22 Nev. 203.*

Duty of Sheriff to Transfer Prisoners, When.

2262. SEC. 4. It shall be the duty of the Sheriff, either by himself, his deputy, or by one or more of his Jailers, to transfer all prisoners from his county to whatever place of imprisonment the sentence of the court may require, at as early a day after said sentence as practicable; and for that purpose the County Commissioners are hereby required to furnish, out of the county treasury, all necessary costs, charges, and expenses of the prisoner or prisoners, and of the officer or officers having charge thereof, to which shall be added mileage for each officer, at the rate of twenty cents per mile, one way only; and the above provisions shall be applicable in cases where prisoners are taken from prisons to be tried at any courts in other counties. It is hereby made the duty of the County Commissioners to allow, out of the county treasury, as in other cases provided, a fair and adequate monthly compensation for the services of all Jailers by the Sheriff employed or appointed. *As amended, Stats. 1866, 189.*

Allowance to Prisoners.

2263. SEC. 5. If any Sheriff, or Jailer, shall defraud any prisoner of his allowance, or shall not allow reasonable allowance and accommodation, he shall forfeit fifty dollars for each offense, to be recovered by an action of debt by the County Commissioners, for the use of the county.

Jailer to Make Returns of Prisoners—Penalty for Neglect.

2264. SEC. 6. Every Jailer, five days prior to the opening of each term of the district court, in the district in which his county is situate, shall return to the Commissioners of his county a certified list of all the prisoners then in his custody, with the time and causes of their commitment, and the length of the term for which they were committed; and he shall, also, return to said Commissioners, within five days after the close of said term of said court, the name, and cause, and term of commitment, of every prisoner committed during said term of said court; and any Jailer, who shall neglect to make such returns, for every such neglect, shall pay a fine not exceeding fifty nor less than twenty dollars, to be imposed at the next succeeding term of said court, on information of said Commissioners of such neglect; and such fine shall go to the county.

Convicts Hired Out.

2265. SEC. 7. Every Sheriff may hire out, or put to labor, any person or persons in his custody who shall be convicted of the following crimes: Petit larceny, grand larceny, burglary, assault and battery with intent to commit murder, bribery, perjury, and fraud, taking all necessary means to secure their safe keeping, and shall charge the earnings of said prisoners to himself, for the sustenance of said prisoners. Any surplus that may accrue from such labor shall be paid into the county treasury.

United States Prisoners.

2266. SEC. 8. Persons may be committed, under the authority of the United States, to any jail, upon payment of the expenses of supporting such prisoners, five dollars per month to the county for the use of the jail, and all legal fees of the Jailer; and the Sheriff shall receive such prisoners, and subject them to the same employment, discipline, and treatment, and be liable for any neglect of duty, as in case of other prisoners; but the county shall, in no case, be liable for any escape.

Rate of Imprisonment in Default of Fine.

2267. SEC. 9. Whenever any prisoner, under conviction for any criminal

offense, shall be confined in jail for any inability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail, at the rate of two dollars per day, until the fine, forfeiture, or cost so imposed shall have been satisfied.

Prisoner May Be Removed, How.

2268. SEC. 10. Whenever, from any sufficient cause, the Sheriff shall think it expedient that the prisoners be removed from the jail, in his county, on application in writing, to the Governor of the state, by the Sheriff, the Governor may order said prisoners to be removed to some other jail, anywhere within the state, there to be detained in the same manner, and by the same process as in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

Expenses of Removal.

2269. SEC. 11. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

An Act to authorize Sheriffs to work prisoners.

Approved February 9, 1876, 53.

To Perform Labor on Public Works.

2270. SECTION 1. Every person convicted of petit larceny, and imprisoned in the county jail, may be required, by a special or general order of the Board of Commissioners of the county in which said person was convicted, to perform labor on the public works or ways in the county.

An Act to authorize the employment of criminals confined in the several jails throughout this state.

Approved March 8, 1879, 98.

To Employ Criminals.

2271. SECTION 1. The Board of County Commissioners in each and every county of the State of Nevada, the Mayor and Board of Aldermen of each and every incorporated city within this state, and the Board of Trustees of each and every incorporated town within this state, are hereby authorized and required to make all necessary arrangements, as hereinafter provided, to utilize the labor of the prisoners committed to any jails within any county, city, or town within this state, for a term of imprisonment by the Judges of the several district courts within this state, or the Justices of the Peace in any and all townships throughout this state.

Deemed Sentenced to Labor—Proviso.

2272. SEC. 2. All prisoners sentenced by the Judge of any district court, or by the Justices of the Peace of any justice's court, and sentenced to a term of imprisonment in any county, city, or town jail shall be deemed to have been also sentenced to labor during such term, unless the Judge or Justice of the Peace, sentencing said prisoner, for good cause orders otherwise.

Control of Prisoners, Who to Have—Public Works.

2273. SEC. 3. The Sheriff of each and every county in this state shall have charge and control over all prisoners committed to his care and keeping, in their respective county jails, and the Chiefs of Police and Town Marshals in the several cities and towns throughout this state shall have charge and control over all prisoners committed to their respective city and town jails; and the said Sheriff, Chiefs of Police, and Town Marshals, and each of them, shall see that the pris-

oners under their care are at all times kept at labor on the public works in their respective counties, cities, and towns, at least six hours a day during six days of the week, when the weather will permit, when so required by either the Board of County Commissioners of their respective counties, or by the Mayor and Board of Aldermen of their respective cities, or by the Board of Trustees of their respective towns. By the public works, as used in this Act, is understood the construction, or repair, or cleaning of any streets, road, sidewalks, public square, park, building, cutting away hills, grading, putting in sewers, or other work whatever, which is or may be authorized to be done by and for the use of any of the said counties, cities, or towns, and the expense of which is not to be borne exclusively by individuals or property particularly benefited thereby.

Punishment May Be Inflicted for Refusal to Work.

2274. SEC. 4. In case any prisoner or prisoners are disobedient or disorderly, or do not faithfully perform their task, the said officers having charge of them may inflict punishment upon them by confining them in dark and solitary cells, and the officers so punishing shall keep a record of the punishment so inflicted, showing its cause, mode and degree, and duration, making a correct report of the same, on the last day of each month, to their respective boards in each county, city, and town, together with the amount and character of work done by said prisoners during the month.

Prisoners to Have Guard.

2275. SEC. 5. No prisoner or prisoners shall be allowed to go from the walls of the prison without a proper and sufficient guard.

Rebate for Good Conduct.

2276. SEC. 6. For each month in which the prisoner appears, by the record provided for in section four of this Act, to have been obedient, orderly and faithful, five days shall, with the consent of the board having power in the premises, be deducted from his term of sentence.

An Act to provide fire wardens in unincorporated cities and villages.

Approved March 1, 1875, 109.

Sheriff to Appoint Policemen.

2277. SECTION 1. It shall be the duty of the Sheriff of any county in the State of Nevada to appoint one or more policemen for any city, town, or village which is unincorporated, when requested to do so, as provided by an Act entitled "An Act to provide policemen in unincorporated cities, towns and villages," approved March eleventh, eighteen hundred and sixty-five. The policemen so appointed shall be ex officio fire wardens of the unincorporated cities, towns, or villages for which they are acting as policemen.

Duty of Fire Wardens.

2278. SEC. 2. It shall be the duty of the said fire wardens to go, in the day time, and examine all houses, buildings, or superstructures within the city, town, or village where they are acting as said fire wardens and policemen, and ascertain from personal examination, the condition of all the chimneys, stovepipes, stoves, flues, ranges, grates, furnaces, or other articles, or anything used in said house, building, or superstructure, in which to hold fire or to conduct the smoke from any fire; and when any of said articles or the fixtures thereto are found to be so defective, in make or material, or so situated as to endanger any of the property of said city, town, or village, or the property of any of the inhabitants thereof, to loss from fire by or on account of any of said defects, then the said fire wardens shall, in writing, notify the owner or occupant of said house, building, or superstructure, where such defective chimney, flue, or stovepipe, or other article, is situated, to repair the same, so as to prevent danger from fire to the

property in said city, town or village; and said fire wardens shall also direct the manner in which said repairs shall be made; said fire wardens shall also, under the direction of the Chief Engineer of the Fire Department, where there is one, and where there is no Chief Engineer of a Fire Department in a city, town, or village, then under the direction of the Sheriff, shall examine streets, alleys, outlots, and the surrounding of houses and buildings in such city, town or village, where he is acting as such fire warden, and direct the removal, by the owner of the premises, of any inflammable matter or material found thereon; and generally to perform such duties as directed by the Sheriff of the county or the Chief of the Fire Department in the city, town, or village, to fully protect the property of such city, town, or village, from loss by conflagration. *91 Tac. Rep. 137*

Failure to Repair Defective Flue, etc.

2279. SEC. 3. Any person who shall, after being notified by the fire wardens to repair any defective chimney, flue, furnace, range, oven, stovepipe, or fixture therewith connected, so as to prevent the same from endangering the property of said city, town, or village from destruction or loss by fire, who shall neglect or refuse, for a longer time than twenty-four hours after notice in writing to repair the same, to comply with the order and direction of said fire wardens, and shall fail or refuse to make the required repairs, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars and not to exceed five hundred dollars, together with the costs of prosecution in the case.

Failure to Remove Inflammable Material, etc.

2280. SEC. 4. When the said fire wardens shall order the removal of any dangerous or inflammable material from the premises of any person, a failure to comply or remove the same upon the part of the owner, occupant, or agent of the premises where said dangerous or inflammable material is situated, for the period of forty-eight hours after notice in writing from said fire warden to remove the same from the limits of the city, town, or village, so as to prevent danger therefrom, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than one hundred dollars, together with the costs of prosecution, and shall also be directed to remove said dangerous or inflammable article or articles, or that the same shall be removed by the said fire warden at the expense of said defendant, in case the defendant neglects to remove the same for one day after being notified by the Justice of the Peace or other officer so to do.

Fee of Warden.

2281. SEC. 5. The fire warden shall be allowed a fee of five dollars in each conviction, in addition to other costs, to be collected from defendant.

An Act providing for the election of County Assessors in the several counties of this state, and defining their duties.

Approved March 9, 1865, 345.

Election of Assessor.

2282. SECTION 1. At the election for county officers held in the several counties of this state, in the year eighteen hundred and sixty-six, and at such election every two years thereafter, there shall be elected by the qualified electors of each county a County Assessor.

Sheriff ex officio Assessor in most counties.

Term of Office.

2283. SEC. 2. The term of the County Assessor shall commence on the first day of January next succeeding his election, and continue for two years thereafter, and until his successor is elected and qualified.

Bond and Oath of Office.

2284. SEC. 3. Each County Assessor, before entering upon the duties of his office, shall execute to the people of the State of Nevada, a bond in the penal sum of five thousand dollars, with two or more sufficient sureties, to be approved by the Board of County Commissioners, and filed in the office of the County Clerk, conditioned for the faithful performance of all the duties of his office required by law; and shall take the oath of office as prescribed by law, which shall be indorsed on his certificate of election or appointment.

1. **DEPUTY ASSESSOR—LIABILITY OF SURETIES.** *Kruttschnitt v. Hauck*, 6 Nev. 163.

2. **SURETIES ON BONDS—DIFFERENT PHASES.** See *State v. Nevin*, 19 Nev. 162; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *Alderson v. Mendes*, 16 Nev. 298.

Vacancy, How Filled.

2285. SEC. 4. In case of a vacancy in the office of the County Assessor, or failure of any County Assessor to qualify as required in this Act, the Board of County Commissioners shall appoint some suitable person possessing the qualifications of an elector, residing within such county, to fill the vacancy; and the person thus appointed shall give bond and take the like oath that is required of Assessors elected by the people, and shall hold his office until the next general election, and until his successor is elected and qualified.

May Appoint Deputies—Proviso.

2286. SEC. 5. Said Assessor shall have the power of appointing one or more deputies, to aid him in his official duties, for whose conduct he shall be responsible; *provided*, that the Assessor, before he shall appoint a deputy or deputies, shall divide the county into convenient districts, of which division notice shall be given to the Board of County Commissioners of said county; *and, provided further*, that the Board of County Commissioners may fix the number of days for which pay shall be allowed any deputy for assessing a district.

Punishment for Neglect.

2287. SEC. 6. If any Assessor or Deputy Assessor shall be guilty of neglect of any of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars.

Suit on Bonds.

2288. SEC. 7. Suit may be instituted on the Assessor's bond, in the manner prescribed by law, for the benefit of any person who may be aggrieved by the wrongful act or conduct of such Assessor or his deputy.

May Administer Oaths.

2289. SEC. 8. The Assessor and his deputies are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as such Assessors.

IGNORANCE OF OFFICIAL DUTY NO EXCUSE—JUDGMENT FOR OFFICIAL DELINQUENCY. *State v. Kruttschnitt*, 4 Nev. 179.

An Act in relation to County Assessors, and to repeal sections one and two of "An Act in relation to County Assessors, their terms of office and compensation," which became a law March 14, 1883.

Approved March 14, 1899, 92.

Term of Office.

2290. SECTION 1. The County Assessors elected in the several counties in this state, after the passage of this Act shall hold office for the term of two years.

Not to Affect Incumbents.

2291. SEC. 2. The provisions of this Act shall not affect the duration of the term of any County Assessor now in office.

Repeal.

2292. SEC. 3. Sections numbered one and two of that certain Act entitled "An Act in relation to County Assessors, their terms of office and compensation," which became a law March 14, 1883 [p. 123], are hereby repealed.

An Act to provide for the appointment of Deputy County Assessors, and to provide for their compensation.

Approved February 23, 1887, 77.

May Appoint Deputies.

2293. SECTION 1. The County Commissioners of each county, in their discretion, may authorize the County Assessor to appoint one or more deputies, who shall receive not to exceed five dollars for each day's service actually performed, and said Commissioners shall not allow pay for such deputy for more than six months in each year, and may limit the time for which he is to be paid to any number of days less than six months, in their discretion.

How Paid.

2294. SEC. 2. The compensation of Deputy Assessors shall be paid by the County Treasurer out of the same fund and in the same manner as the salary of the Assessor.

When Not Applicable.

2295. SEC. 3. The provisions of this Act shall not apply to any county in this state which polled eighteen hundred votes or more at the general election in the year one thousand eight hundred and eighty-six.

This Act supersedes an Act on the same subject, Stats. 1885, 40.

An Act concerning District Attorneys.

Approved March 11, 1885, 386.

Election Of.

2296. SECTION 1. There shall be a District Attorney in each of the counties of this state, who shall be elected by the qualified electors of each county, at the general election in one thousand eight hundred and sixty-six, and every two years thereafter, and shall enter upon the duties of his office on the first Monday of the month following his election.

Bond of District Attorney.

2297. SEC. 2. Before entering upon the duties of his office he shall execute and file with the County Clerk a bond to the county, conditioned for the faithful performance of his duties, the penalty of said bond to be fixed by the Board of County Commissioners.

Public Prosecutor.

2298. SEC. 3. The District Attorney in each county shall be public prosecutor therein.

SEC. 4, relative to salaries, is superseded by the various salary Acts.

To Conduct Prosecutions.

2299. SEC. 5. He shall attend the district courts held in his county, for the transaction of criminal business; he shall, also, attend justices' courts in his county, when required by Justices of the Peace, and conduct all prosecutions on behalf of the people for public offenses.

Court May Appoint Attorney, When.

2300. SEC. 6. If he fails to attend any session of the district court, or for any reason is disqualified from acting in any matter coming before said court, the court may appoint some other person to perform the duties of District Attor-

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ney, who shall receive a reasonable compensation, to be certified by the court and paid out of the county treasury. The amount so paid shall be deducted by the Board of County Commissioners from the salary allowed to said District Attorney. *As amended, Stats. 1889, 73.*

Duties of District Attorney.

2301. SEC. 7. The District Attorney shall draw all indictments, when required by the grand jury; shall defend all suits brought against his county; shall prosecute all recognizances forfeited in the district court, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to his county; and he shall also perform such other duties as may be required of him by law.

To Deliver Receipt.

2302. SEC. 8. When he receives money or property in his official capacity, he shall deliver a receipt therefor to the person from whom he receives it, and file a duplicate with the County Auditor.

To File Account.

2303. SEC. 9. He shall, on the first Mondays of May, August, and November, in each year, file in the office of the County Treasurer an account in writing, certified by oath, of all moneys received by him in his official capacity during the preceding three months, and shall, at the same time, pay it over to the County Treasurer.

Treasurer to Bring Action Against, When.

2304. SEC. 10. For a failure to comply with the provisions of the last section, the County Treasurer shall bring an action against him and his sureties for the recovery of all moneys in his hands not accounted for, and for twenty per cent additional thereon.

Legal Opinion Without Fees.

2305. SEC. 11. The District Attorney shall, without fees, give his legal opinion to any Assessor, Collector, Auditor, or County Treasurer, and to all other county, township or district officers, within his county, in any matter relating to the duties of their respective offices. *As amended, Stats. 1887, 52.*

Fees in Addition to Salary.

2306. SEC. 12. The District Attorney, in addition to the yearly salary allowed by law, shall receive the following fees: For each conviction in capital cases, the sum of one hundred dollars; on conviction of any other felony, fifty dollars; and for a misdemeanor in the district court, twenty-five dollars, to be charged against the defendant; for each conviction in a justice's court, to be taxed as costs against the defendant (but shall in no case be charged against the county), fifteen dollars; for each suit in a justice's court, for delinquent taxes, a fee of five dollars; and in the district court, ten dollars, with ten per cent on the amount of taxes delinquent, said fee and percentage to be taxed and collected as costs; for all amounts collected by him for the county by action, except for delinquent taxes, ten per cent.

To Attend Sitzings of Commissioners.

2307. SEC. 13. The District Attorney, when not in attendance on the sittings of the district court as criminal prosecutor, shall attend the sittings of the Board of County Commissioners, when engaged in auditing accounts and claims brought against the county, and in all cases oppose such accounts or claims as he may deem illegal or unjust, and shall, at all times, give his advice when required to said Commissioners upon matters relating to their duties.

Norcross v. Shearer, 23 Nev. 76.

Not to Present Claims.

2308. SEC. 14. No District Attorney, except for his own services, shall be allowed to present any claim, account, or demand, for allowance, against his own

county, or in any way to advocate the relief asked on the claim or demand made by another.

May Be Indicted.

2309. SEC. 15. The District Attorney may be indicted for a misdemeanor in office, or neglect of duty, and be punished by fine not exceeding one thousand dollars, or by removal from office, or by both such fine or removal from office, said fine to be paid into the county treasury for county purposes.

Vacancy, How Filled.

2310. SEC. 16. In case a vacancy should occur in the office of District Attorney, by death, removal, or otherwise, the Board of County Commissioners shall appoint some suitable person to fill such vacancy, who shall remain in office during the balance of the unexpired term.

1. TERM OF DISTRICT ATTORNEY WHEN APPOINTED. *State v. Wells*, 8 Nev. 105.

DUTY OF BRINGING DELINQUENT TAX SUITS SPECIALLY IMPOSED ON DISTRICT ATTORNEY. *Drake v. Hobart*, 12 Nev. 408.

2. DISTRICT ATTORNEY AUTHORIZED TO APPOINT DEPUTY. *State v. Harris*, 12 Nev. 414.

An Act relating to and consolidating certain county offices in the State of Nevada.

Approved February 23, 1887, 73.

District Attorneys, Ex Officio Superintendent of Schools.

2311. SECTION 1. On and after the first Monday in January, A. D. eighteen hundred and eighty-nine, the District Attorneys, in addition to their respective duties, shall be ex officio Superintendent of Schools within their respective counties, without additional compensation.

To Apply to All Counties.

2312. SEC. 2. There shall be no County Superintendent of Schools elected in this state except as provided in section one of this Act.

This Act does not apply to Lyon county, Stats. 1897, 73.

An Act to require District Attorneys to make certain reports to the Attorney-General.

Approved March 1, 1889, 54.

District Attorneys to Report to Attorney-General.

2313. SECTION 1. That on the first day of December, one thousand eight hundred and ninety, and annually at said date thereafter, the several District Attorneys or other persons charged by law with the prosecution of criminals, shall make report in writing to the Attorney-General, stating the number and character of prosecutions for the year ending on the first day of November preceding the date aforesaid within the territory embraced in the limits of the office for which the reports are made, respectively; the number of persons convicted, and the average punishment on conviction; the number of persons acquitted, or as to whom prosecutions were abated or dismissed, and the number of prosecutions pending at the end of time covered by report; also, the costs of such prosecutions to each county, and the amount of fines paid therein. Within sixty days after the sentence of any person to the state prison, the District Attorney who prosecuted said person shall make a written statement of the facts and circumstances connected with the commission of the crime for which the person stands convicted, as shown by the evidence upon the trial thereof, and deliver said statement to the District Judge who presided at the trial of said cause. Said Judge shall within thirty days thereafter correct said statement according to the facts and testimony; and, after certifying that said statement is a correct statement of the substance of the testimony introduced upon the trial of said

action, said Judge shall forward the same to the Attorney-General. Upon receipt of said statement the Attorney-General shall file the same in his office, and shall not permit the same to be taken therefrom, except at the request of the Board of Pardons, or a member thereof. Said statement shall be considered by the Board of Pardons as prima facie evidence of the matter therein contained.

Penalty for Failure to Report.

2314. SEC. 2. Be it further enacted, that any District Attorney, or other person charged by law with the prosecution of criminals, who fails to make a full report or statement, as and within the time required by section one of this Act, shall forfeit to the State of Nevada the sum of one hundred dollars, to be recovered on motion of the Attorney-General in the district in and for the proper county, on ten days' notice of such motion.

An Act relating to District Attorneys and partners thereof.

Approved February 23, 1887, 81.

Not to Engage as Counsel Against State or County.

2315. SECTION 1. No District Attorney, or partner thereof, shall appear within his county as attorney in, or directly or indirectly aid, counsel or assist in the defense in any criminal action began or prosecuted during his term; nor in any civil action began or prosecuted during his term, in behalf of any person suing or sued by the state or any county thereof.

Violation of This Act a Misdemeanor.

2316. SEC. 2. A violation of this Act shall be deemed a misdemeanor, and punished by a fine not less than two hundred and fifty dollars and not more than one thousand dollars, and in addition the offender shall be disbarred from practicing law in any of the courts of this state until restored by the supreme court of the state.

Applies With Equal Effect.

2317. SEC. 3. This Act shall apply with equal effect to any and all partners of said District Attorneys.

An Act concerning officers.

Approved November 29, 1881, 288.

SECTION 1 (bond of Justice of the Peace) superseded, Sec. 2421.

Justices.

2318. SEC. 2. The Justices shall be conservators of the peace in their respective townships, and shall discharge such duties as may be prescribed by law.

County Clerks to Take Oath and Give Bond.

2319. SEC. 3. Each County Clerk shall, before entering upon the duties of his office, take the oath prescribed by law, and execute to the county a penal bond, in the sum of ten thousand dollars, conditional for the faithful discharge of the duties of his office, which bond shall be approved by the Probate Judge, and filed in the office of the County Recorder.

Additional Duties of Clerk.

2320. SEC. 4. The County Clerk shall perform such duties as Clerk of the Probate Court, Clerk of the Board of County Commissioners, and County Auditor, as required by law, and shall discharge such other duties as may be prescribed by law.

SEC. 5 (bond of Constable) superseded, Sec. 2422.

Duties of Constable and Sheriff.

2321. SEC. 6. Each Constable shall be a peace officer in his township, and

shall serve all mesne and final process issued by a Justice of the Peace, and shall discharge such other duties as are or may be prescribed by law; *provided*, that in case a Sheriff or his deputy in any county in this state shall make an arrest of any person or persons charged with a criminal offense or arrested in the commission of an offense, the Sheriff or his deputy shall have the privilege, and it shall be his duty to serve all process, whether mesne or final, and attend the court executing the order thereof in the prosecution of the person or persons so arrested, whether in a justice or a district court, to a final conclusion, and whether the same be an offense of which a Justice of the Peace has jurisdiction, or whether the same be a preliminary examination or hearing; and the said Sheriff or his deputy shall receive the same fees and in the same manner therefor as the Constable of the township, in which such justice court is held, would receive for like service. *As amended, Stats. 1887, 134.*

An Act relating to the duties of County Clerks regarding claims against a county.

Approved March 1, 1883, 92.

To Administer Oaths.

2322. SECTION 1. The County Clerks of the several counties of this state are hereby authorized and directed, when required to administer to the claimant of any demand against the county, the necessary oath, and properly certify to the same without any fee or charge therefor.

An Act in relation to County Treasurers.

Approved November 29, 1861, 286.

SECTION 1 superseded, Sec. 1798.

Oath of Office and Bond.

2323. SEC. 2. The County Treasurer, before he enters on the duties of his office, shall take the oath faithfully to discharge the duties of his office, as prescribed by law; he shall, also, before he enters upon the duties of his office, give a bond to the county, with at least two sureties residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said Treasurer during his term of office, the amount to be fixed, and the bond to be approved by the County Commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid as the Commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties.

1. OFFICIAL BOND OF TREASURER. *White Pine Co. v. Herrick*, 19 Nev. 34.
2. LIABILITY ON BOND WHERE MONEY IS STOLEN. *State v. Nevin*, 19 Nev. 162.
3. OFFICIAL BONDS IN GENERAL. See *Kruttschnitt v. Hauck*, 6 Nev. 163; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *Jeffree v. Walsh*, 14 Nev. 143.

Receipts and Disbursements.

2324. SEC. 3. He shall receive all moneys due and accruing to his county, and disburse the same, on the proper orders issued and attested by the County Auditor.

May Appoint Deputies.

2325. SEC. 4. County Treasurers may appoint one or more deputies, and may take from them bond with sureties; they shall have power to remove their deputies at pleasure, and every County Treasurer and his sureties shall be liable for every official act of his deputies.

Office, Location and Hours.

2326. SEC. 5. The County Treasurer shall keep his office at the seat of jus-

tice of his county, and shall keep the same open for transaction of business during business hours; and he, and his deputies, are authorized to administer all oaths necessary in the discharge of the duties of his office.

Accounts, Arrangement Of.

2327. SEC. 6. He shall so arrange and keep his books that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

Subject to Inspection.

2328. SEC. 7. He shall, at all times, keep his books and office subject to the inspection and examination of the Board of County Commissioners, and shall exhibit the money in his office to such board at least once a year, and as often as such board may require.

To Pay Orders When Funds—Procedure When No Funds.

2329. SEC. 8. He shall pay all orders of the County Auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such indorsement over his signature, which shall entitle such order thenceforth to draw legal interest; *provided*, that such interest shall cease from the date of notice by publication in some newspaper printed or circulated in his county, to be given by the County Treasurer, that there are funds to redeem such outstanding orders, which notice such Treasurer shall give in such case, and if there be no such newspaper, then by posting such notice at three public places in such county.

Orders and Interest Redeemed.

2330. SEC. 9. When the County Treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest distinct from the principal.

How Redeemed.

2331. SEC. 10. County orders shall be redeemed by the Treasurer according to the priority of the time of presentment; *provided*, such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to the priority of presentment, or number; but such Treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds.

Redeemed Orders, Where Deposited.

2332. SEC. 11. The Treasurer shall, on the first Monday in September, in each year, deposit with the County Auditor all county orders redeemed, who shall receipt therefor.

Removal of Treasurer.

2333. SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent Treasurer, he may be removed by the Board of County Commissioners of his county.

Annual Settlements.

2334. SEC. 13. The County Treasurer shall annually make complete settlements with the Board of County Commissioners, at the regular September term thereof, and shall, at the expiration of his term of office, deliver to his successor all public moneys, books, and papers in his possession.

SEC. 14 is superseded by the various salary Acts.

An Act authorizing County Treasurers to place county funds in bank, on open account, under certain restrictions.

Approved March 12, 1885, 93.

Unanimous Consent of Bondsmen Necessary.

2335. SECTION 1. The County Treasurers of the several counties in this state may, when a private or an incorporated bank is located at the county seat, deposit, with unanimous consent of their bondsmen, county funds in such bank or banks upon open account; and when no such bank or banks exist at such county seat, may deposit, with the unanimous consent of their bondsmen, county funds with any private or incorporated bank in the State of Nevada. Such accounts shall be kept in the name of the county in such manner as the Board of County Commissioners may prescribe. The balances in said banks, as certified to by the proper officer thereof, and by the oath of the County Treasurer, may be counted as cash. All orders, checks or drafts drawn by the County Treasurer on the banks with which county funds are deposited, shall be countersigned by the County Clerk thereof, and shall bear on their face the number of the county warrant for which such order, check or draft is issued.

Bondsman Released by Giving Notice.

2336. SEC. 2. Whenever any bondsman or bondsmen whose consent to deposit the county funds in any bank or banks has not been obtained in writing, such bondsman or bondsmen shall be released from all responsibility on the bond of said Treasurer, upon giving notice as required by law.

An Act to provide a fund for the payment of the salaries of the District Judges of this state, and to regulate the disposition of the same.

Approved March 1, 1886, 160.

Treasurer to Set Apart Money—Auditor to Draw Warrants.

2337. SECTION 1. It shall be the duty of the County Treasurer of the county or counties composing the respective districts, and they are hereby directed and required, from the revenues of the several counties respectively, to set apart quarterly a sufficient amount of money to pay the quarterly compensation, or such county's proportion of the quarterly compensation of the several District Judges of this state, of and within the several districts respectively as apportioned by law. And the moneys so set apart as aforesaid, shall be and remain a special and exclusive fund, to be known in each county as the "District Judge's Salary Fund"; and it shall be the duty of the several County Auditors, and they are hereby directed and required, to draw their warrants upon such special fund, upon the County Treasurers of the several counties, upon the first Monday of each month of each year, in favor of each District Judge of the said district, for the monthly compensation of said Judges as fixed by law; and it shall be the duty of the County Treasurer of each county, and he is hereby directed and required, to pay such warrants immediately upon the presentation thereof to him, from the moneys so set apart in said fund; and the moneys so set apart shall not be used or appropriated to any other fund, use, or purpose. *As amended, Stats. 1869, 98.*

Surplus to Go to General Fund.

2338. SEC. 2. Whenever there shall be in any of the treasuries of any of the counties, from any cause, a surplus of money in the special fund by this Act created, over and above a sufficient fund to pay the warrants named, as in this Act provided, it shall be the duty of the County Treasurer of such county to transfer such surplus money to the general fund, and use or disburse the same as required by the laws relating thereto; *provided*, that no portion of said surplus

money shall go into the redemption fund of any county, created for the purpose of paying the outstanding indebtedness of any county.

An Act relating to county certificates of indebtedness, or warrants.

Became a law March 18, 1885, 128.

Warrants Payable in Order of Issuance.

2339. SECTION 1. All warrants or certificates of indebtedness issued by County Auditors, as such, shall be paid in the order in which they are issued; *provided*, that whenever any county warrant or certificate of indebtedness shall not be presented for payment within six months after notice shall have been given that said warrant or certificate is payable, the money held for payment of such warrant shall be paid out as other county funds, but whenever any warrant as aforesaid shall thereafter be presented, the same shall be deemed then due and payable; *and, provided further*, that nothing in this Act shall be so construed as to prevent the transfer of money from one county fund to another, as provided by law.

An Act concerning County Recorders, and defining their duties.

Approved March 9, 1865, 351.

To File Oath and Bond.

2340. SECTION 1. Each of the County Recorders of the several counties of this state, before entering upon the duties of their office, shall take the constitutional oath of office, and shall enter into bonds in the penal sum of not less than five nor more than fifty thousand dollars, at the discretion of the County Commissioners of the respective counties, with two or more sureties, to be approved by the District Judge, conditioned for the faithful performance of their duties as Recorders.

May Take Acknowledgments.

2341. SEC. 2. The County Recorder of the several counties within this state, are hereby empowered to take and certify the acknowledgment and proof of all conveyances affecting any real estate, or of any other written instrument, for which he shall receive the same fees as are now prescribed by law. *As amended, Stats. 1871, 107.*

RECORDER MAY TAKE ACKNOWLEDGMENTS. *State v. Hoover, 5 Nev. 141; Arrington v. Wittenberg, 12 Nev. 99.*

May Appoint Deputy.

2342. SEC. 3. The Recorder of each county may appoint a deputy, who shall hold his office during the pleasure of the Recorder; such appointment shall be in writing, and filed and recorded in the office of the Recorder. And the Recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties as such deputy.

Vacancy.

2343. SEC. 4. In case of a vacancy in the office of Recorder, or his absence or inability to perform the duties of his office, the deputy shall perform the duties of Recorder during the continuance of such vacancy, absence, or inability.

Fees in Advance.

2344. SEC. 5. The Recorder shall not be bound to record any instrument, or file any paper or notice, or to furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are paid or tendered.

INCOMING RECORDER HAS A RIGHT TO RECORD INSTRUMENTS LEFT UNRECORDED BY HIS PREDECESSOR AND TO RECOVER FEES THEREFOR. *Davis v. Thompson, 1 Nev. 17.*

An Act relating to the duties of County Recorders in certain counties.

Approved February 20, 1864, 151.

When County is Attached to or Divided.

2345. SECTION 1. From and after the first day of March, eighteen hundred and sixty-four, it shall be the duty of the County Recorder, to which any other county is attached for legislative, judicial, or other purposes, to keep a separate book or books for the recording of all papers relating to property or other matters connected with said county and entitled to record, which book or books shall, upon the separate organization of the county attached, become the property of said county; *provided*, that in case of any alterations in the boundary lines between the two counties by the Act authorizing a separation of the counties, for the purposes for which they were attached, the acting Recorder of the county in which the records have been kept, shall be entitled to keep possession of the book or books in which such records are kept for a sufficient length of time, not exceeding sixty days, for the purpose of copying any papers which, owing to the change of boundary lines, may become necessary to be recorded in his county.

Transfer of Records.

2346. SEC. 2. Whenever it shall become necessary, owing to any change in boundaries, contemplated in section one of this Act, to have any transfer of records from the records of the county so separating to those of the other, it shall be the duty of the County Recorder, in which such records have been kept, to make such transfer, for which service he shall be entitled to receive from the County Treasurer a sum of money not exceeding forty per cent of the fees as established by law at the time for making the original records; *provided*, that he shall receive no pay for transcribing any records which the County Commissioners shall decide unnecessary to be made.

An Act for the purchase and preservation of public newspapers printed and published in the several counties in this state.

Approved February 1, 1865, 127.

Recorder to Subscribe for Newspapers.

2347. SECTION 1. The Recorders of the several counties of this state are hereby authorized and required to subscribe for such newspapers, at least one and not more than three, printed and published in their respective counties, as the Board of Commissioners therein may select and determine.

Amended, Stats. 1895, 107; amending Act declared unconstitutional. *Norcross v. Com. Washoe Co.*, 22 Nev. 399.

Copies to Be Preserved.

2348. SEC. 2. It shall be the duty of each County Recorder to receive and preserve every copy of the paper or papers so subscribed for, and from time to time to cause the same to be properly arranged and bound in volumes of convenient size in a substantial manner, and said volumes when bound shall be kept in his office for the use of the courts when needed, of strangers, and the inhabitants of the county, all of whom shall have access to the same at all times during office hours, free of charge. For his service in this behalf the Recorder shall receive the sum of ten dollars for each volume, and for neglect of the duties hereby imposed shall forfeit the sum of fifty dollars, to be recovered, with costs, in a civil action before any court, one-half of which shall be paid into the county school fund, and the other half to the person who shall prosecute such action to successful termination.

Subscription, How Paid.

2349. SEC. 3. The subscription price of such paper or papers, the binding of the several volumes thereof, and the Recorder's compensation for the care and

preservation of the same shall be paid out of the general fund of the county, in the same manner that other charges are audited and allowed from such fund by the respective Boards of County Commissioners; *provided*, that in any county in this state in which the County Recorder is compensated by a salary, said Recorder shall receive for such services no compensation additional to that of his salary, and the expense of procuring and filing such newspapers shall be paid as stationery and books for the office of said Recorder are now paid for.

Penalty for Abstracting or Destroying Papers.

2350. SEC. 4. Any person who shall willfully abstract, destroy, mutilate, or deface any number or volume of such newspaper purchased in pursuance of this Act, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months, or both such fine and imprisonment, in the discretion of the court; *provided*, that one-half such fine shall be paid into the school fund of the county wherein such offender may be convicted, and the other half to the person who shall make the complaint.

An Act to abolish the compensation of County Auditors for extending the taxes on the assessment roll.

Approved March 9, 1891, 30.

No Additional Compensation.

2351. SECTION 1. It shall be the duty of the County Auditors of the several counties to extend the taxes on the assessment roll without any additional fees or compensation.

An Act relating to official bonds.

Approved March 19, 1891, 77.

Bond of County Clerk.

2352. SECTION 1. In all counties in this state wherein the County Clerk is ex officio County Recorder, the official bond of such officer shall be recorded in the manner and place now provided by law, and immediately thereafter shall be deposited for safe keeping in the office of the County Treasurer.

An Act to provide for obtaining correct statements of the financial condition of the several counties of this state, and other matters of statistical information.

Approved February 26, 1873, 97.

Auditor to Make Statement to Controller—What to Show.

2353. SECTION 1. It is hereby made the duty of the several County Auditors of this state, on the first day of December of each year, to prepare and forward to the Controller of State a statement showing: First—The indebtedness of such county, funded and floating, stating the amount of each class, and the rate of interest borne, by such indebtedness, or any part thereof, and the amount of cash in the county treasury, in its several funds. Second—A careful estimate of the value of all property owned by such county. Third—The aggregate value of the real estate and personal property in such county, as shown by the last assessment roll, stating each separately. Fourth—The rate of taxation in said year in such county, and the amount of poll taxes collected, and the number of registered voters. Fifth—The amount of taxes so assessed, stating the portion, if any, there was delinquent.

Circular of Surveyor-General.

2354. SEC. 2. On or before the first of March of each year the Surveyor-General shall furnish to the Auditor of each county a sufficient number of copies of the circular letter provided for by section sixth of "An Act concerning the office

of Surveyor-General," approved March twentieth, eighteen hundred and sixty-five, for the use of the County Assessor of the county, and said Auditor shall deliver the same to the Assessor on or before the second Monday of March of each year.

County Assessors to Report to Auditor—What to State.

2355. SEC. 3. It shall be the duty of each County Assessor, at the time he delivers to the Clerk of the Board of Equalization his assessment roll for the year in which general elections are held, to deliver also a written report, embracing said year and the preceding year, to the County Auditor, of the following matters within his county: First—The number of acres in agriculture, and the approximate amount of agricultural, grazing and timber lands. Second—The number of horses, mules, jacks, jennies, cattle, sheep, goats, and swine. Third—The aggregate quantity of wheat, rye, maize, potatoes, grapes, and other agricultural products. Fourth—A statement of the approximate quantity of mineral lands in such county, and the approximate quality and value of such. Fifth—The number of mills, manufactories, distilleries, and breweries, classifying each, and the number and length of all flumes and water ditches used to convey water for mining, manufacturing, or agricultural purposes. Sixth—The number of transplanted fish, their variety, by whom transplanted, and into what stream or lake. Seventh—The number and kind of forest, fruit, or nut trees transplanted, and under successful cultivation. Eighth—He shall also report such other matters as may be required by the annual circular of the Surveyor-General, and for such report he shall be allowed such a sum as may be fixed by the Board of County Commissioners, not exceeding the sum of one hundred dollars, and until the delivery of such report, the last month's salary or wages of said Assessor, be retained. *As amended, Stats. 1879, 37.*

Auditor to Forward Report to Surveyor-General.

2356. SEC. 4. Each of such County Auditors shall, immediately upon receiving the report of the County Assessor, provided for in this Act, forward the same, by mail or express, to the Surveyor-General of the state.

Surveyor-General and Controller to Report to Legislature.

2357. SEC. 5. The Controller of the state and the Surveyor-General shall include in their annual reports to the Governor, a digest and synopsis, in tabular form, of all reports received by them under the provisions of this Act, and shall name therein the counties, if any, which have failed to make the report herein provided; and the Governor shall transmit said reports of the Controller and Surveyor-General of the state to the legislature.

Circular, What to Contain.

2358. SEC. 6. It shall be the duty of the Surveyor-General to cause to be inserted in his annual circular letter, provided for in section six of "An Act concerning the office of the Surveyor-General," approved March twentieth, eighteen hundred and sixty-five, so much of this Act as shall give the County Assessors knowledge of the duties required of them by this Act, and he shall cause to be printed an appropriate set of blanks for the use of such Assessors in reporting uniformly the matters required of them by this Act, and shall forward a sufficient number of such blanks to the County Auditor at the time of sending his circular letter, as in this Act provided. And the said Auditors, at the time of delivering said circulars, shall deliver to said Assessors the necessary blanks, as provided for in this Act.

Printing.

2359. SEC. 7. The costs of printing by this Act required shall be audited by the Controller of State, and allowed and paid in the same manner as provided by law for other printing.

Assessor to Gather Information for Reports.

2360. SEC. 8. It is hereby required of the County Assessors, and all Deputy County Assessors, that the information required of them by this Act shall be gathered and collected at the time they make their annual assessment for taxation, as required by law, and shall be gathered by diligent and personal inquiry; and each of them shall certify to said reports of statistical information, that the same has been so gathered, and is as full and complete as can reasonably be made.

An Act to regulate surveyors and surveying.

Approved November 29, 1861, 267.

Office of County Surveyor.

2361. SECTION 1. That the office of County Surveyor be and is hereby created; and that there shall be a County Surveyor, to be elected in each county by the qualified electors thereof at the general election, whose term of office shall be two years, and until his successor in office shall be qualified; *provided*, that the County Surveyors elected in the year A. D. eighteen hundred and sixty-two shall hold their offices for two years thereafter, and until their successors shall qualify; and said Surveyors shall keep their offices at the county seats of their respective counties, and shall qualify on or before the first Monday in October following their election. *As amended, Stats. 1862, 32.*

Oath and Bond Required.

2362. SEC. 2. Each County Surveyor, before entering upon the duties of his office, shall take and subscribe to the oath of office, and execute to the State of Nevada a bond in the penal sum of not less than five hundred (\$500) nor more than five thousand (\$5,000) dollars (the amount thereof to be determined by the Board of County Commissioners), with two or more sureties, residing in the county, to be approved by the Board of County Commissioners, conditioned for the faithful performance of the duties of his office, which bond shall be filed with the County Clerk. *As amended, Stats. 1883, 45.*

May Appoint Deputies.

2363. SEC. 3. The County Surveyor may appoint Deputy Surveyors, who shall severally take and subscribe to the oath of office, and for the faithful performance of whose duties he shall be responsible.

Certificate to Be Evidence.

2364. SEC. 4. The certificate of the County Surveyor, or any of his deputies, shall be submitted as legal evidence in any court of this state; but the same may be subject to be rebutted by other evidence. Surveys made by the mutual consent of parties may also be admitted as legal evidence in any court of this state; *provided*, this section shall not be so construed to exclude the testimony of other surveyors or engineers.

Surveys, When by Other Persons.

2365. SEC. 5. When it shall appear that the County Surveyor is interested in any tract of land, the title of which is in dispute before any court, and a survey of which is necessary, the court shall direct the survey to be made by some capable and disinterested person, who shall return such survey on oath or affirmation, and shall receive for his services the same fees as the County Surveyor would be entitled to for similar services.

Vacancy in Office.

2366. SEC. 6. During a vacancy in the office of County Surveyor of any county, the Probate Judge of such county may appoint some competent person to perform the duties of Surveyor until such vacancy shall be filled in the manner prescribed by law.

Duties of Surveyor.

2367. SEC. 7. It shall be the duty of said County Surveyor, either by himself or one of his deputies, to execute any survey that may be required by order of any court, or upon the application of any individual or corporation.

Record of Surveys.

2368. SEC. 8. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county for that purpose, which shall be transmitted to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with the certificate of survey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

Surveys, How Expressed.

2369. SEC. 9. In all surveys the courses shall be expressed according to the true meridian; and the variation of the magnetic meridian from the true meridian shall be expressed on the plat with the year, month, and day of the survey.

SEC. 10 repealed, Stats 1865, 344.

Neglect of Duties.

2370. SEC. 11. Any County Surveyor who shall fail or refuse to perform any of the duties required of him by this Act, shall be fined by any court of competent jurisdiction, in a sum not exceeding five hundred dollars.

Fees.

2371. SEC. 12. Each County Surveyor shall be allowed such fees as are provided by law.

SEC. 13 repealed, Stats. 1865, 344.

Washoe Co. v. Humboldt Co., 14 Nev. 123.

An Act relating to the office of Public Administrators, and prescribing their duties.

Approved March 7, 1883, 115.

Election of Administrator.

2372. SECTION 1. There shall be elected in each organized county in this state, at the general election A. D. eighteen hundred and eighty-four, and at the general election every two years thereafter, a Public Administrator, who shall be ex officio Coroner in and for his county.

See Sec. 2424.

Oath and Bond—When to Qualify.

2373. SEC. 2. Every Public Administrator, elected at the last general election, and who shall hereafter be elected, shall take the constitutional official oath, and give such official bond as shall be in amount required and fixed by the Board of County Commissioners of his county, by an order duly entered in the minutes of such board, to be conditioned, secured, approved, filed, and recorded as the bonds of other county officers are, or may be required by law to be, and shall be so conditioned as to hold the principal and sureties liable for any breach thereof made, while acting, or illegally refusing to act, in either official capacity. The official oath shall be for the faithful performance of the duties of both offices, and shall be taken and subscribed upon both the certificate of election (or appointment, if appointed to fill a vacancy, as hereinafter provided) and the official bond; and that upon the bond shall be recorded with it; *provided*, the official bond of no Public Administrator shall be less than two thousand dollars; *and, provided further*, that the County Commissioners may, upon reasonable cause therefor shown, require at any time a new bond, or an additional bond, to be given upon ten days' notice in writing; and if not so given, shall thereupon declare the office

vacant, and fill the vacancy by appointment for the remainder of the term; and shall, in like manner, fill a vacancy in said office arising from any other cause. Any person appointed to the office of Public Administrator, shall within ten days thereafter, qualify in the same manner as if elected thereto. Every person elected to fill said office shall qualify as in this section required, on or before the first Monday of January next after his election, and shall on that day enter upon the discharge of his official duties.

OFFICIAL BOND—PLEADING. *Jeffree v. Walsh*, 14 Nev. 143.

Duties and Compensation.

2374. SEC. 3. The Public Administrator of each county shall have the right, and it is hereby made his duty to administer, according to law, upon the estate of any person, who died intestate in, or was at the time of his or her death, a resident of the county, or had assets therein, not administered on in some other county, or of a deceased stranger, or of a deceased testate, when no executor is appointed, or if appointed fails to qualify, unless administered upon within one month after the death of the testate, or within the time provided by law for an intestate, or by a relative by blood or marriage within the fourth degree of consanguinity or legal relation. For such administration he shall be paid as other administrators or executors are paid.

To Report to District Judge.

2375. SEC. 4. Each Public Administrator shall on the first Monday in January and July, in each year, and at the termination of his official duties, make a verified written report to the District Judge having jurisdiction in the premises, of all estates of deceased persons which have officially passed into his hands, the value of the same, the expenses, if any, paid thereon, and the balance of property, effects, or money, if any, remaining in his hands, and the Judge to whom such report is made shall cause it to be made public, by publication or posting, as he may deem just and right.

Final Settlement—To Pay Over Funds.

2376. SEC. 5. Each executor, administrator and Public Administrator, on final settlement of an estate and proper order of the court having jurisdiction in the matter thereof, or before final settlement, upon the regular order of the court aforesaid, shall pay over all moneys of such estate to the lawful heirs or legatees, or devisees thereof, and if there be none of either, then to the County Treasurer, and the County Treasurer shall pay the same to the State Treasurer, and if the same escheat to the state, the State Treasurer shall place the same in the fund devoted and pledged to educational purposes.

Not to Be Interested in Expenditures.

2377. SEC. 6. No Public Administrator shall be interested in anywise in any expenditures of any kind, made on account of any estate of a deceased person upon which he is administering, save as necessarily made in the due course of such administration, nor shall he be associated in business with any one so interested, and he shall state in his semi-annual reports that he has not been so interested or associated.

Willful Misdemeanor.

2378. SEC. 7. For any willful misdemeanor in office any Public Administrator may be indicted, tried, and if found guilty, fined in any sum not exceeding two thousand dollars and removed from office; but such fine and removal shall not bar any existing right of civil action upon his official bond.

Information to Administrators—May Institute Suits.

2379. SEC. 8. It shall be the duty of all persons, especially of all civil officers, to give all information in their possession to Public Administrators respecting estates and the property and condition thereof, upon which no other person has then administered. Public Administrators may, and it is hereby made their

official duty to, institute, maintain and prosecute all necessary actions at law and in equity, for the recovery and for the protection of the property, debts, papers, or other estate of any deceased person upon whose estate they may be administering.

How Governed.

2380. SEC. 9. Except as in this Act otherwise provided, Public Administrators, in administering upon estates, shall be governed by the same rules and laws by which other administrators or executors are.

SEC. 10 superseded, Sec. 2424.

To Qualify, etc.

2381. SEC. 11. Each and every Public Administrator in this state who was elected at the last general election, who has not already qualified, shall qualify as provided in this Act within thirty days after its approval, and shall be governed and controlled in his office by the provisions of this Act, and shall be ex officio Coroner in and for his county. They shall immediately, after so qualifying, enter upon the discharge of their official duties, and shall continue in office until the first Monday in January, eighteen hundred and eighty-five (A. D. 1885), and thereafter until their successors shall have been duly elected and qualified.

Money Paid to State, How Recovered.

2382. SEC. 12. Any money paid into the state treasury under the provisions of this Act, excepting from an escheated estate, may be recovered by the rightful heirs or legatees thereof in the following manner, viz: Such heir or heirs, legatee or legatees, may present their claim therefor to the district court which had jurisdiction of the final settlement of the estates to which such money belonged, and make proof of the validity of such claim, after notice given to the Attorney-General of the state, to the satisfaction of such court, under such rules as it may prescribe. If satisfied on the hearing that such claimant or claimants are rightfully entitled to the same, the court shall enter a decree that such money be paid to him or them. Such decree shall then be certified to the State Board of Examiners, stating the amount thereby found to be due, and the said board shall allow the same, certify it to the Controller, who shall draw his warrant therefor on the Treasurer, and who shall pay the same; *provided*, no proceedings shall be maintained under the provisions of this section of this Act unless commenced within six years next after the final settlement of the estate to which they relate; *and, provided further*, that all costs of such proceeding shall be paid by the applicant or applicants. If not applied for within six years, as above provided, or if applied for and not obtained, such moneys shall then be placed in the irreducible school fund of this state.

When to Make Application for Letters.

2383. SEC. 13. Public Administrators are authorized to administer on the estate of any deceased person in any case where by law he is entitled to administer by virtue of his office and shall be required to make formal application for letters of administration, as in the case of administrators, but he shall not be required to file or have approved any bond, except as such Public Administrator. in any case; *provided*, that the bond of any Public Administrator may be increased as provided in this or other Acts.

Books, etc., to Be Turned Over.

2384. SEC. 14. Public Administrators shall, at the expiration of their terms of office, surrender up to their successors in office all the books or papers belonging or appertaining to said office, including all exhibits, estates, money and property in their possession.

An Act providing for the appointment of Notaries Public, fixing their terms of office and specifying the numbers to be appointed.

Approved March 6, 1897, 44.

Appointment of Notaries Public in the Several Counties.

2385. SECTION 1. The Governor is hereby authorized to appoint and commission Notaries Public in and for the several counties in this state, in the numbers which may be fixed by law.

2386. SEC. 2. For Storey county there may be twelve Notaries Public.

2387. SEC. 3. For Lander county there may be sixteen Notaries Public.

2388. SEC. 4. For Nye county there may be sixteen Notaries Public.

2389. SEC. 5. For Churchill county there may be four Notaries Public.

2390. SEC. 6. For Esmeralda county there may be thirty Notaries Public.

2391. SEC. 7. For Washoe county there may be sixteen Notaries Public.

2392. SEC. 8. For Ormsby county there may be eight Notaries Public.

2393. SEC. 9. For Humboldt county there may be sixteen Notaries Public.

2394. SEC. 10. For Douglas county there may be five Notaries Public.

2395. SEC. 11. For Lyon county there may be eight Notaries Public.

2396. SEC. 12. For Eureka county there may be fifteen Notaries Public.

2397. SEC. 13. For Elko county there may be fifteen Notaries Public.

2398. SEC. 14. For White Pine county there may be ten Notaries Public.

2399. SEC. 15. For Lincoln county there may be sixteen Notaries Public.

New Counties.

2400. SEC. 16. For any new county hereafter created or organized there may be six Notaries Public until such time as by law another number shall be specified.

Term of Office.

2401. SEC. 17. The term of office of a Notary Public shall be four years; *provided*, the Governor may, at any time, for cause, revoke the commission of a Notary Public.

Repealing Act.

2402. SEC. 18. Section one of an Act entitled "An Act to provide for the appointment of Notaries Public, and defining their duties," approved February 9, 1864 [p. 46], and all Acts and parts of Acts amendatory of said section, are hereby repealed in so far as they may conflict with the provisions of this Act.

An Act to provide for the appointment of Notaries Public, and defining their duties.

Approved February 9, 1864, 46.

SECTION 1 repealed, see Secs. 2385-2402.

Fees to Be Paid for Commission.

2403. SEC. 2. Each Notary Public, before he enters upon the duties of his office, and at the time he receives his commission, shall pay to the Secretary of State the sum of ten dollars for the state library fund, and shall take the official oath as prescribed by law, which oath shall be endorsed on his commission, and shall enter into a bond to the State of Nevada in the sum of two thousand dollars, to be approved by the District Judge of the county for which said Notary Public may be appointed. *As amended, Stats. 1865, 408; 1883, 82.*

Bond and Oath to Be Filed.

2404. SEC. 3. The bond, together with his oath of office, shall be filed and recorded in the office of the County Recorder of said county.

Powers and Duties.

2405. SEC. 4. Notaries Public shall have authority to demand acceptance and payment of foreign and domestic bills of exchange, and to protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the laws of nations, and according to commercial usages, or by the law of any state, territory, or country, may be performed by Notaries Public.

May Protest Bills of Exchange.

2406. SEC. 5. They may also demand acceptance of inland bills of exchange, and payment thereof, and of promissory notes, and may protest the same for non-payment, or non-acceptance, as the case may require.

Power of Attorney, etc.

2407. SEC. 6. Each Notary Public shall have power to take and to certify to the acknowledgment or proof of powers of attorneys, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance, or the instrument of writing executed by any married woman, or to give a certificate of such proof or acknowledgment, which certificate shall be indorsed on the said deed or other instrument, or attached thereto.

Depositions and Affidavits.

2408. SEC. 7. Each Notary Public shall also have power and authority to take depositions and to administer oaths and affirmations in all matters incident or belonging to the duties of his office, and to take affidavits to be used before any court, Judge, or officer in this territory.

Record to Be Kept.

2409. SEC. 8. Each Notary Public shall keep a correct record of all his official acts, done and performed by him under and by virtue of the authority conferred by sections four and five of this Act.

Record of Instruments.

2410. SEC. 9. Each Notary Public shall also keep a correct record, wherein he shall enter the name or character of any instrument acknowledged or proved before him, as provided in section six of this Act, together with the date of the same and the parties thereto, as the same appears therein.

Seal to Be Kept.

2411. SEC. 10. Each Notary Public shall provide a notarial seal, an impression of which shall be made on his official bond, on which shall be engraved the name of the county for which he is commissioned, and the initials of the territory, the name of the Notary, and the words "Notary Public," with which he shall authenticate all his official acts, which seal together with the register and official documents, shall not be liable to be seized on execution.

SEAL PRIMA FACIE EVIDENCE OF OFFICIAL CHARACTER IN CERTAIN CASES. *Sargent v. Collins*, 3 Nev. 280.

Certified Copy of Record.

2412. SEC. 11. Each Notary Public, when required, shall give a certified copy of any record in his office to any person upon payment of the legal fees therefor; and any certificate or instrument, either printed or written, purporting to be the official act of a Notary Public under his seal and signature, shall be received in any county in this territory as prima facie evidence of the official character of such instrument, and of the truth of the facts therein set forth.

Protests of Bills of Exchange, etc.

2413. SEC. 12. The original protest of a Notary Public, under his hand and official seal, of any bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment by him of such bill of exchange or note for acceptance or payment, and the non-acceptance or non-payment thereof, and the service of notice on any or all of the parties to such bill of exchange or prom-

issory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note to whom the same was given, and the postoffice nearest thereto, shall be prima facie evidence of the facts contained therein. The certificate of a Notary Public, drawn from his record, stating the protest and the facts therein contained, shall be evidence of the facts in like manner as the original protest.

Penalty for Neglect of Duty.

2414. SEC. 13. For any misconduct or neglect in any of the cases in which any Notary Public appointed under the authority of this territory, is authorized to act, either by the law of this territory, or of any state, territory, or country, or by the law of nations, or by commercial usage, he shall be liable on his official bond to the parties injured thereby, for all the damages sustained; and for any willful violation or neglect of duty, any Notary Public shall be subject to criminal prosecution, and may be punished by fine not exceeding two thousand dollars, and removal from office.

Removal, etc.

2415. SEC. 14. If any Notary Public die, resign, be disqualified, or removed from office, or remove from the county for which he is appointed, his records and all his public papers shall, within sixty days, be delivered on demand to the Recorder of the county, whose duty it shall be to demand the same within that time, who shall deliver them to the successor of the said Notary when qualified.

To Deliver Records, etc., to Successor.

2416. SEC. 15. When the term of office of any Notary Public expires, and his successor is appointed and qualified, he shall deliver his records and public papers to such successor on demand.

Certified Copies.

2417. SEC. 16. Any Notary Public having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor or predecessors could have done.

Fees.

2418. SEC. 17. Each Notary Public shall receive such fees for his services as may be allowed by law.

Act Repealed.

2419. SEC. 18. An Act concerning Notaries Public, approved November twenty-ninth, eighteen hundred and sixty-one, is hereby repealed, such repeal to take effect on the first day of March, eighteen hundred and sixty-four, on which day the commissions of the officers appointed under said law shall be revoked, and they shall deliver their records and all their public papers to the Recorder of the county for which they may have been appointed.

Act Legalized, etc.

2420. (SEC. 3.) All acts regularly done of Notaries Public appointed under the Territory of Nevada, and continued in office after the admission of Nevada as a state, are hereby legalized, so far as the same can be done without interfering with vested rights; and such Notaries are hereby continued in office, with like powers as heretofore had, until this Act goes into effect, at which time their terms of office shall be at an end, and such offices shall be deemed vacant. *Supplemental section, Stats. 1865, 408.*

An Act concerning official bonds of Justices of the Peace and Constables.

Approved February 10, 1873, 51.

Justices, Oath and Bond.

2421. SECTION 1. Each Justice of the Peace hereafter elected or appointed in

this state shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the Board of County Commissioners, in the penal sum of not less than one thousand dollars nor more than five thousand dollars, as may be designated by such Board of County Commissioners; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the County Clerk's office.

Constables, Oath and Bond.

2422. SEC. 2. Each Constable hereafter elected or appointed in this state shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the Board of County Commissioners, in the penal sum of not less than one thousand dollars nor more than three thousand dollars, as may be designated by such Board of County Commissioners; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the County Clerk's office.

OFFICIAL BONDS AND DUTIES IN GENERAL. *State v. Kruttschnitt*, 4 Nev. 178; *King v. Grannis*, 3 Nev. 548; *McDonald v. Prescott*, 2 Nev. 109; *Kruttschnitt v. Hauck*, 6 Nev. 163; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *State v. Wells*, 8 Nev. 105; *State v. Nevin*, 19 Nev. 162; *Jeffrey v. Walsh*, 14 Nev. 143; *White Pine Co. v. Herrick*, 19 Nev. 34; *Alderson v. Mendes*, 16 Nev. 298.

An Act to create Coroner's townships, making Justices of the Peace ex officio Coroners therein, fixing their townships, prescribing their duties and compensation, providing when it shall take effect, and to repeal all Acts and parts of Acts in conflict with this Act.

Approved February 23, 1899, 25.

Coroner's Township.

2423. SECTION 1. Every Justice's township in this state is hereby made a Coroner's township.

Justice of the Peace Ex Officio Coroner.

2424. SEC. 2. All Justices of the Peace in this state are hereby made ex officio Coroners.

Extent of Jurisdiction.

2425. SEC. 3. The Coroners created by section two of this Act shall have authority to perform all the duties of Coroners only within the township where they, as Justices of the Peace reside; *provided*, that in townships where there is no qualified Justice of the Peace, the Justice of the Peace residing nearest to the place where the services of a Coroner are required, within the same county, shall have the same authority in the township where there is no qualified Justice of the Peace, as in the township where he resides.

Duties.

2426. SEC. 4. The duties of Coroners in this Act provided for shall be the same as are now provided by law.

Fees and Compensations.

2427. SEC. 5. The fees and compensations of Coroners as in this Act provided, shall be as now prescribed by law.

An Act concerning Coroners.

Approved November 28, 1861, 129.

SECTION 1 superseded by above Act.

Jury, Inquest, etc.

2428. SEC. 2. When a Justice of the Peace, acting as Coroner, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the

death has been occasioned by unnatural means, he shall go to the place where the body is, and summon no less than six nor more than twelve persons qualified by law to serve as jurors, to appear before him forthwith, at the place where the body is, to inquire into the cause of the death.

Person Neglecting to Appear When Summoned as Juror.

2429. SEC. 3. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the Justice of the Peace acting as Coroner, in his official capacity, in any court of competent jurisdiction, and paid by him into the county treasury.

Juror's Oath.

2430. SEC. 4. When six or more of the jurors attend, they shall be sworn by the Justice of the Peace, acting as Coroner, to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence.

Witnesses.

2431. SEC. 5. The Justice of the Peace, acting as Coroner, may issue subpoenas for witnesses, returnable as he may direct, and served by himself, or such person as he may direct. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jurors, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body.

Witness May Be Attached.

2432. SEC. 6. Any witness failing to obey the subpoena of the Justice of the Peace, acting as Coroner, may be attached and fined for contempt of such jury, in like manner as in a justice's court.

Verdict, What to State.

2433. SEC. 7. After inspecting the body and hearing the testimony the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth the name of the deceased, when, where, and by what means he came to his death; if by criminal means, the name of the person causing the death.

Testimony to Be in Writing.

2434. SEC. 8. The testimony at such inquest shall be reduced to writing by the Justice of the Peace, acting as Coroner, or as he may direct, and by him, without delay, filed in the office of the district court of the county.

To Secure Arrest, When.

2435. SEC. 9. If the jury find that the person was killed by another, under circumstances not excusable or justifiable in law, and the party committing the act be not in custody, the Justice of the Peace, acting as Coroner, shall issue a warrant, signed by him with his name of office, for the arrest of the accused.

Warrant May Be Served in Any County.

2436. SEC. 10. The warrant of the Justice of the Peace, acting as Coroner, may be served in any county of the state, and returned by the officer serving before a magistrate of the county in which it is issued; the officer receiving such warrant shall have the same power under the warrant as by virtue of a warrant from any court or magistrate of the state.

Property of Deceased.

2437. SEC. 11. It is hereby made the duty of the Justice of the Peace, acting as Coroner, to deliver without delay to the Treasurer of the county any money or property which may have been found with the deceased, unless taken from his possession by legal authority; and if the Justice of the Peace, acting as Coroner,

this state shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the Board of County Commissioners, in the penal sum of not less than one thousand dollars nor more than five thousand dollars, as may be designated by such Board of County Commissioners; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the County Clerk's office.

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Duties.

2426. SEC. 4. The duties of Coroners in this Act provided for shall be the same as are now provided by law.

Fees and Compensations.

2427. SEC. 5. The fees and compensations of Coroners as in this Act provided, shall be as now prescribed by law.

An Act concerning Coroners.

Approved November 28, 1861, 129.

SECTION 1 superseded by above Act.

Jury, Inquest, etc.

2428. SEC. 2. When a Justice of the Peace, acting as Coroner, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the

death has been occasioned by unnatural means, he shall go to the place where the body is, and summon no less than six nor more than twelve persons qualified by law to serve as jurors, to appear before him forthwith, at the place where the body is, to inquire into the cause of the death.

Person Neglecting to Appear When Summoned as Juror.

2429. SEC. 3. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the Justice of the Peace acting as Coroner, in his official capacity, in any court of competent jurisdiction, and paid by him into the county treasury.

Juror's Oath.

2430. SEC. 4. When six or more of the jurors attend, they shall be sworn by the Justice of the Peace, acting as Coroner, to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence.

Witnesses.

2431. SEC. 5. The Justice of the Peace, acting as Coroner, may issue subpoenas for witnesses, returnable as he may direct, and served by himself, or such person as he may direct. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jurors, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body.

Witness May Be Attached.

2432. SEC. 6. Any witness failing to obey the subpoena of the Justice of the Peace, acting as Coroner, may be attached and fined for contempt of such jury, in like manner as in a justice's court.

Verdict, What to State.

2433. SEC. 7. After inspecting the body and hearing the testimony the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth the name of the deceased, when, where, and by what means he came to his death; if by criminal means, the name of the person causing the death.

Testimony to Be in Writing.

2434. SEC. 8. The testimony at such inquest shall be reduced to writing by the Justice of the Peace, acting as Coroner, or as he may direct, and by him, without delay, filed in the office of the district court of the county.

To Secure Arrest, When.

2435. SEC. 9. If the jury find that the person was killed by another, under circumstances not excusable or justifiable in law, and the party committing the act be not in custody, the Justice of the Peace, acting as Coroner, shall issue a warrant, signed by him with his name of office, for the arrest of the accused.

Warrant May Be Served in Any County.

2436. SEC. 10. The warrant of the Justice of the Peace, acting as Coroner, may be served in any county of the state, and returned by the officer serving before a magistrate of the county in which it is issued; the officer receiving such warrant shall have the same power under the warrant as by virtue of a warrant from any court or magistrate of the state.

Property of Deceased.

2437. SEC. 11. It is hereby made the duty of the Justice of the Peace, acting as Coroner, to deliver without delay to the Treasurer of the county any money or property which may have been found with the deceased, unless taken from his possession by legal authority; and if the Justice of the Peace, acting as Coroner,

this state shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the Board of County Commissioners, in the penal sum of not less than one thousand dollars nor more than five thousand dollars, as may be designated by such Board of County Commissioners; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the County Clerk's office.

Constables, Oath and Bond.

2422. SEC. 2. Each Constable hereafter elected or appointed in this state shall, before entering upon the duties of his office, take the oath prescribed by law, and execute a bond to the State of Nevada, to be approved by the Board of County Commissioners, in the penal sum of not less than one thousand dollars nor more than three thousand dollars, as may be designated by such Board of County Commissioners; which bond shall be conditioned for the faithful performance of the duties of his office, and shall be filed in the County Clerk's office.

OFFICIAL BONDS AND DUTIES IN GENERAL. *State v. Kruttschnitt*, 4 Nev. 178; *King v. Grannis*, 3 Nev. 548; *McDonald v. Prescott*, 2 Nev. 109; *Kruttschnitt v. Hauck*, 6 Nev. 163; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *State v. Wells*, 8 Nev. 105; *State v. Nevin*, 19 Nev. 162; *Jeffrey v. Walsh*, 14 Nev. 143; *White Pine Co. v. Herrick*, 19 Nev. 34; *Alderson v. Mendes*, 16 Nev. 298.

An Act to create Coroner's townships, making Justices of the Peace ex officio Coroners therein, fixing their townships, prescribing their duties and compensation, providing when it shall take effect, and to repeal all Acts and parts of Acts in conflict with this Act.

Approved February 23, 1899, 25.

Coroner's Township.

2423. SECTION 1. Every Justice's township in this state is hereby made a Coroner's township.

Justice of the Peace Ex Officio Coroner.

2424. SEC. 2. All Justices of the Peace in this state are hereby made ex officio Coroners.

Extent of Jurisdiction.

2425. SEC. 3. The Coroners created by section two of this Act shall have authority to perform all the duties of Coroners only within the township where they, as Justices of the Peace reside; *provided*, that in townships where there is no qualified Justice of the Peace, the Justice of the Peace residing nearest to the place where the services of a Coroner are required, within the same county, shall have the same authority in the township where there is no qualified Justice of the Peace, as in the township where he resides.

Duties.

2426. SEC. 4. The duties of Coroners in this Act provided for shall be the same as are now provided by law.

Fees and Compensations.

2427. SEC. 5. The fees and compensations of Coroners as in this Act provided, shall be as now prescribed by law.

An Act concerning Coroners.

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SECTION 1 superseded by above Act.

Jury, Inquest, etc.

2428. SEC. 2. When a Justice of the Peace, acting as Coroner, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the

death has been occasioned by unnatural means, he shall go to the place where the body is, and summon no less than six nor more than twelve persons qualified by law to serve as jurors, to appear before him forthwith, at the place where the body is, to inquire into the cause of the death.

Person Neglecting to Appear When Summoned as Juror.

2429. SEC. 3. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the Justice of the Peace acting as Coroner, in his official capacity, in any court of competent jurisdiction, and paid by him into the county treasury.

Juror's Oath.

2430. SEC. 4. When six or more of the jurors attend, they shall be sworn by the Justice of the Peace, acting as Coroner, to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence.

Witnesses.

2431. SEC. 5. The Justice of the Peace, acting as Coroner, may issue subpoenas for witnesses, returnable as he may direct, and served by himself, or such person as he may direct. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jurors, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body.

Witness May Be Attached.

2432. SEC. 6. Any witness failing to obey the subpoena of the Justice of the Peace, acting as Coroner, may be attached and fined for contempt of such jury, in like manner as in a justice's court.

Verdict, What to State.

2433. SEC. 7. After inspecting the body and hearing the testimony the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth the name of the deceased, when, where, and by what means he came to his death; if by criminal means, the name of the person causing the death.

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Warrant May Be Served in Any County.

2436. SEC. 10. The warrant of the Justice of the Peace, acting as Coroner, may be served in any county of the state, and returned by the officer serving before a magistrate of the county in which it is issued; the officer receiving such warrant shall have the same power under the warrant as by virtue of a warrant from any court or magistrate of the state.

Property of Deceased.

2437. SEC. 11. It is hereby made the duty of the Justice of the Peace, acting as Coroner, to deliver without delay to the Treasurer of the county any money or property which may have been found with the deceased, unless taken from his possession by legal authority; and if the Justice of the Peace, acting as Coroner,

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OFFICIAL BONDS AND DUTIES IN GENERAL. *State v. Kruttschnitt*, 4 Nev. 178; *King v. Grannis*, 3 Nev. 548; *McDonald v. Prescott*, 2 Nev. 109; *Kruttschnitt v. Hauck*, 6 Nev. 163; *State v. Rhoades*, 6 Nev. 352, and 7 Nev. 434; *State v. Wells*, 8 Nev. 105; *State v. Nevin*, 19 Nev. 162; *Jeffrey v. Walsh*, 14 Nev. 143; *White Pine Co. v. Herrick*, 19 Nev. 34; *Alderson v. Mendes*, 16 Nev. 298.

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2429. SEC. 3. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars, to be recovered by the Justice of the Peace acting as Coroner, in his official capacity, in any court of competent jurisdiction, and paid by him into the county treasury.

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2430. SEC. 4. When six or more of the jurors attend, they shall be sworn by the Justice of the Peace, acting as Coroner, to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence.

Witnesses.

2431. SEC. 5. The Justice of the Peace, acting as Coroner, may issue subpoenas for witnesses, returnable as he may direct, and served by himself, or such person as he may direct. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jurors, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body.

Witness May Be Attached.

2432. SEC. 6. Any witness failing to obey the subpoena of the Justice of the Peace, acting as Coroner, may be attached and fined for contempt of such jury, in like manner as in a justice's court.

Verdict, What to State.

2433. SEC. 7. After inspecting the body and hearing the testimony the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth the name of the deceased, when, where, and by what means he came to his death; if by criminal means, the name of the person causing the death.

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Warrant May Be Served in Any County.

2436. SEC. 10. The warrant of the Justice of the Peace, acting as Coroner, may be served in any county of the state, and returned by the officer serving before a magistrate of the county in which it is issued; the officer receiving such warrant shall have the same power under the warrant as by virtue of a warrant from any court or magistrate of the state.

Property of Deceased.

2437. SEC. 11. It is hereby made the duty of the Justice of the Peace, acting as Coroner, to deliver without delay to the Treasurer of the county any money or property which may have been found with the deceased, unless taken from his possession by legal authority; and if the Justice of the Peace, acting as Coroner,

fail to pay or deliver such money or property to the Treasurer, the Treasurer may recover the same by action at law.

Disposition of Moneys.

2438. SEC. 12. Upon payment of money into the Treasurer's office, in such case he shall place it to the credit of the county. If it be property, he shall proceed, upon reasonable notice, to sell the same at public sale, and place the proceeds to the credit of the county.

Time in Which Money May Be Demanded.

2439. SEC. 13. If the money be demanded within six years, the Treasurer shall pay the same to the person legally authorized to receive it, after deducting the expenses of the inquest, and of the county in the matter, but the same may be paid at any subsequent time to the representatives of the deceased, upon an order from the tribunal invested with the power to allow claims against the county.

Coroner to Account for Money.

2440. SEC. 14. The Justice of the Peace acting as Coroner shall, before his claim is allowed for such inquest, file with such claim an affidavit, setting out the amount of money or property found with the deceased, and the disposition of the same by him.

Burials, Expenses Of.

2441. SEC. 15. After the inquest, if no one take charge of the body, it shall be the duty of the Justice of the Peace acting as Coroner to cause the same to be decently buried, and pay the expense thereof from any money found with the deceased; if no such money is found, then the same shall be charged against the county. The Justice of the Peace acting as Coroner shall receive the sum of five dollars out of the county treasury for attending the burial of such body.

An Act concerning Justices of the Peace.

Approved March 4, 1881, 141.

One Justice May Act for Another.

2442. SECTION 1. Whenever any Justice of the Peace, in consequence of ill health, absence from his township, or other cause, shall be prevented from attending to his official duties, it shall be lawful for him to invite any other duly qualified Justice of the Peace of the same county to attend to his official duties, including that of Registry Agent, instead of such absent or disqualified Justice of the Peace; *provided*, such temporary vacancy, resulting from absence or disqualification, shall not be so filled for more than thirty days at any one time. *As amended, Stats. 1885, 20.*

An Act to detect and punish incendiarism.

Approved March 3, 1879, 58.

Citizens to Ascertain Causes of Fires.

2443. SECTION 1. Whenever it is made to appear by the complaint of any citizen that any building or other property has been set on fire, or attempted to be, or burned from an unknown cause, or any cause not clearly accidental, it shall be duty of any Justice of the Peace of the county where such fire occurred, or was attempted, and to whom such complaint shall be made, to immediately summon three good and lawful citizens, who shall be householders in the county, to appear at the place of the fire at a time fixed as soon as possible, to inquire when, how, and by what means the fire originated. If any person so summoned does not appear, the Justice shall complete the panel by appointment from the bystanders, or from citizens residing in the vicinity of said fire.

Oath.

2444. SEC. 2. When the panel is complete, the Justice shall administer the following oath: "You, and each of you, solemnly swear that you will diligently examine and inquire when, how, and by what means the fire which has here occurred was caused, and that you will return a true verdict, according to your knowledge and such evidence as shall be laid before you. So help you God."

Subpenas to Issue.

2445. SEC. 3. The Justice of the Peace shall issue subpenas for witnesses, returnable at such time and place as he therein directs. The witnesses shall be sworn, their testimony reduced to writing, and subscribed to by them.

Verdict of Jury.

2446. SEC. 4. The jury, after hearing the testimony, and making all needful examinations and inquiries, shall draw up and deliver to the Justice holding such inquest their verdict, signed by them, or in case of disagreement, by two of them, in which they shall find and certify when, how, and by what means such fire was caused. Said finding, together with the testimony of the witnesses, shall be certified by the Justice and filed with the Clerk of the district court of the county in which such fire originated within one week thereafter.

Free Access to Building.

2447. SEC. 5. For the purpose of investigation, the Justice and jury shall have free access to any building or property whatsoever.

Warrants to Be Issued for Arrest, etc.

2448. SEC. 6. If the jury shall find that any person or persons willfully set fire to the property in question, or attempted to, or that reasonable cause exists for believing them to have been accessory thereto, unless such person or persons be already in custody, the Justice shall issue a warrant for the arrest of the person or persons so charged, and shall deliver the same to any constable in the county or the Sheriff thereof. In such cases, the Justice may bind over the witnesses, or any of them, to appear at an examination of the person or persons so charged at such time and place as he may direct; but nothing in this Act shall be construed to interfere with arrests and examinations of any person charged with the crime of arson, as now provided by law.

Compulsory Attendance.

2449. SEC. 7. For the purposes of this Act, the Justice of the Peace shall have the same power to enforce the attendance of jurors and witnesses as when sitting as a committing magistrate.

Fees, How Paid.

2450. SEC. 8. The compensation for holding such inquest shall be the same as now provided by law for Coroner's inquests, and shall be audited and paid in like manner.

An Act authorizing ministerial officers to appoint deputies.

Approved February 19, 1864, 143.

Who May Appoint Deputies.

2451. SECTION 1. All Prosecuting Attorneys, County Recorders, Clerks of the several district courts, County Clerks, Sheriffs, Assessors, Collectors of Taxes, and Constables, are hereby authorized to appoint deputies, who shall have power to transact all official business appertaining to said officers, to the same extent as their principals.

Responsible for Compensation.

2452. SEC. 2. Said officers shall be responsible for the compensation of said deputies, and shall be responsible on their official bonds for all official mal-

feasance or nonfeasance of the same. Bonds for the faithful performance of their official duties may be required of said deputies by said principals.

Appointments, How Made.

2453. SEC. 3. All appointments of deputies under the provisions of this Act shall be in writing, and shall, together with the oath of office of said deputies, be filed and recorded in a book provided for that purpose in the office of the Recorder of the county within which the principal legally holds and exercises his office. Revocations of such appointments shall also be filed and recorded as herein provided. From the time of the filing of said appointments or revocations therein, persons shall be deemed to have notice of the same.

DEPUTY COUNTY ASSESSOR—LIABILITY OF SURETIES—TERM OF LIABILITY ON BOND OF DEPUTY ASSESSOR. *Kruttschnitt v. Hauck*, 6 Nev. 163.

FEES.

An Act in relation to compensation for official services in cases of pensioners.

Approved January 21, 1889, 18.

Pensioners Not Charged Fees.

2454. SECTION 1. No fee or charge shall be made by any state, county or township officer of this state for administering oaths or certifying or acknowledging any paper for United States pensioners in any matter pertaining to their pensions.

An Act to provide for the payment of attorneys in certain cases.

Approved March 5, 1875, 142.

Attorneys' Fees.

2455. SECTION 1. An attorney appointed by a court to defend a person indicted for any offense, is entitled to receive from the county treasury the following fees: For a case of murder, such fee as the court may fix, not to exceed fifty dollars; for felony, such fee as the court may fix, not to exceed fifty dollars; for misdemeanor, such fee as the court may fix, not to exceed fifty dollars. Such compensation shall be paid by the County Treasurer out of any moneys in the treasury, not otherwise appropriated, upon the certificate of the Judge of the court that such attorney has performed the services required.

Enlarged Fee.

2456. SEC. 2. An attorney cannot, in such case, be compelled to follow a case to another county or into the supreme court, and if he does so, may recover an enlarged compensation, to be graduated on a scale corresponding to the prices allowed.

ATTORNEYS' FEES—CONSTRUCTION OF STATUTE. In construing the statute relative to attorneys' fees in criminal cases: *Held*, that an attorney who defends a prisoner under appointment by the court, is entitled to a fee not exceeding fifty dollars for each trial of the cause, in whatever county the case may be tried, and an additional fee, not exceeding fifty dollars, if the case is followed into the supreme court. *Washoe Co. v. Humboldt Co.* 14 Nev. 123.

N. B. The provisions of the following Act apply to and affect the fees of officers in such counties as poll 800 votes or less, excepting Secs. 8 and 9 (regarding witnesses and jurors) which apply only to counties which poll 450 votes or less. See Sec. 2506; also, see note Secs. 3, 7 and 12 of this Act. For fees in other counties, see Sec. 2468, et seq.:

An Act to regulate fees and compensation for official and other services in the State of Nevada.

Approved March 9, 1865, 333.

Officers' Fees.

2457. SECTION 1. The several officers and persons named in this Act may

demand and receive for their services rendered in discharging the duties imposed upon them by law, the fees and compensation hereinafter specified.

Sec. 2 (Clerk of Supreme Court) superseded, Sec. 2468.

COUNTY CLERKS.

2458. SEC. 3. The County Clerks of the several counties in this state [*polling 800 votes or less*] shall be entitled to fees as follows: For entering each suit on the Clerk's register of actions, and making the necessary entry therein during the trial, one dollar; for filing each paper, twenty-five cents; for issuing summons, one dollar; for entering every appearance, seventy-five cents; for entering return of every writ or process, seventy-five cents; for issuing subpoena, for each witness, fifty cents; for entering each cause on the calendar, and making a copy thereof for each term of the district court, one dollar; for entering every motion, exception, rule, order, or default, fifty cents; for entering every discontinuance, dismissal, or nonsuit, fifty cents; for calling or swearing every jury, one dollar; for administering every oath or affirmation, twenty-five cents; for receiving and entering each verdict of a jury, seventy-five cents; for entering every final judgment, for the first folio, one dollar, and for each subsequent folio, thirty cents; for filing judgment roll, fifty cents; for docketing judgment against each judgment debtor, fifty cents; for issuing execution, one dollar; for entering satisfaction of judgment, for each debtor, fifty cents; for entering every notice of appeal, fifty cents; for copying any proceeding, record, or paper, for each folio, thirty cents; for receiving and entering every remittitur from the supreme court, and accompanying papers, fifty cents; for every certificate, one dollar; for issuing every commission to take testimony, one dollar; for issuing every process under seal, other than subpoena, one dollar; for every certificate under seal, one dollar; for issuing letters testamentary, or of administration, one dollar; for writing and posting notices, when required, for each copy, fifty cents; for recording all instruments, for each folio, thirty cents; for searching the files of each year in his office (but not to charge suitors or attorneys), fifty cents; for taking each bond and justification thereof required by law, one dollar; for taking justification to bond, for each name, fifty cents; for taking acknowledgments of deeds or other instruments, including certificate and seal, for the first name, one dollar, and for each subsequent name, twenty-five cents; for issuing every decree or order of sale of mortgaged property, or writ of injunction, for the first folio, one dollar, and for each subsequent folio, thirty cents; for entering each suit in the plaintiff's and defendant's index, one dollar; for registering each paper when required by law, fifty cents; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the first papers, five dollars; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the final papers, ten dollars; for each day's attendance on the Board of County Commissioners, five dollars; *provided*, the same shall in no case exceed one hundred dollars per annum in the aggregate.

This section does not apply to Eureka county, see Stats. 1891, 38.

1. CLERK IN PREPARING A TRANSCRIPT ON APPEAL IS ONLY ENTITLED TO RECEIVE PAY FOR COPYING SUCH PAPERS, DOCUMENTS AND STATEMENTS AS ARE PROVIDED FOR BY LAW. *State v. Rover*, 13 Nev. 17.

2. THE CLERK IS NOT ENTITLED TO ANY FEE FROM THE COUNTY FOR ISSUING TIME CHECKS OR CERTIFICATES TO EACH INDIVIDUAL JUROR. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

The Clerk is only entitled to charge for such motions and orders as are properly entered in the records of the court. *Id.*

RECORDERS.

2459. SEC. 4. The following fees to the several County Recorders [*in counties polling 800 votes or less*] are hereby established: For receiving, filing, and entering documents required to be recorded, twenty-five cents; for filing and entering any paper not to be recorded, fifty cents; for making all necessary indexes to

feasance or nonfeasance of the same. Bonds for the faithful performance of their official duties may be required of said deputies by said principals.

Appointments, How Made.

2453. SEC. 3. All appointments of deputies under the provisions of this Act shall be in writing, and shall, together with the oath of office of said deputies, be filed and recorded in a book provided for that purpose in the office of the Recorder of the county within which the principal legally holds and exercises his office. Revocations of such appointments shall also be filed and recorded as herein provided. From the time of the filing of said appointments or revocations therein, persons shall be deemed to have notice of the same.

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Enlarged Fee.

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Officers' Fees.

2457. SECTION 1. The several officers and persons named in this Act may

demand and receive for their services rendered in discharging the duties imposed upon them by law, the fees and compensation hereinafter specified.

SEC. 2 (Clerk of Supreme Court) superseded, Sec. 2468.

COUNTY CLERKS.

2458. SEC. 3. The County Clerks of the several counties in this state [*polling 800 votes or less*] shall be entitled to fees as follows: For entering each suit on the Clerk's register of actions, and making the necessary entry therein during the trial, one dollar; for filing each paper, twenty-five cents; for issuing summons, one dollar; for entering every appearance, seventy-five cents; for entering return of every writ or process, seventy-five cents; for issuing subpoena, for each witness, fifty cents; for entering each cause on the calendar, and making a copy thereof for each term of the district court, one dollar; for entering every motion, exception, rule, order, or default, fifty cents; for entering every discontinuance, dismissal, or nonsuit, fifty cents; for calling or swearing every jury, one dollar; for administering every oath or affirmation, twenty-five cents; for receiving and entering each verdict of a jury, seventy-five cents; for entering every final judgment, for the first folio, one dollar, and for each subsequent folio, thirty cents; for filing judgment roll, fifty cents; for docketing judgment against each judgment debtor, fifty cents; for issuing execution, one dollar; for entering satisfaction of judgment, for each debtor, fifty cents; for entering every notice of appeal, fifty cents; for copying any proceeding, record, or paper, for each folio, thirty cents; for receiving and entering every remittitur from the supreme court, and accompanying papers, fifty cents; for every certificate, one dollar; for issuing every commission to take testimony, one dollar; for issuing every process under seal, other than subpoena, one dollar; for every certificate under seal, one dollar; for issuing letters testamentary, or of administration, one dollar; for writing and posting notices, when required, for each copy, fifty cents; for recording all instruments, for each folio, thirty cents; for searching the files of each year in his office (but not to charge suitors or attorneys), fifty cents; for taking each bond and justification thereof required by law, one dollar; for taking justification to bond, for each name, fifty cents; for taking acknowledgments of deeds or other instruments, including certificate and seal, for the first name, one dollar, and for each subsequent name, twenty-five cents; for issuing every decree or order of sale of mortgaged property, or writ of injunction, for the first folio, one dollar, and for each subsequent folio, thirty cents; for entering each suit in the plaintiff's and defendant's index, one dollar; for registering each paper when required by law, fifty cents; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the first papers, five dollars; for making out naturalization papers, including all necessary oaths, affirmations, and certificates, for the final papers, ten dollars; for each day's attendance on the Board of County Commissioners, five dollars; *provided*, the same shall in no case exceed one hundred dollars per annum in the aggregate.

This section does not apply to Eureka county, see Stats. 1891, 38.

1. CLERK IN PREPARING A TRANSCRIPT ON APPEAL IS ONLY ENTITLED TO RECEIVE PAY FOR COPYING SUCH PAPERS, DOCUMENTS AND STATEMENTS AS ARE PROVIDED FOR BY LAW. *State v. Rover*, 13 Nev. 17.

2. THE CLERK IS NOT ENTITLED TO ANY FEE FROM THE COUNTY FOR ISSUING TIME CHECKS OR CERTIFICATES TO EACH INDIVIDUAL JUROR. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

The Clerk is only entitled to charge for such motions and orders as are properly entered in the records of the court. *Id.*

RECORDERS.

2459. SEC. 4. The following fees to the several County Recorders [*in counties polling 800 votes or less*] are hereby established: For receiving, filing, and entering documents required to be recorded, twenty-five cents; for filing and entering any paper not to be recorded, fifty cents; for making all necessary indexes to

each paper filed or recorded, for each name to be indexed, fifty cents; for recording any instrument, paper, or document, for each folio, thirty cents; for every certificate under seal, one dollar; for every entry of discharge of mortgage on the margin of records, fifty cents; for abstract of title for each document embraced thereby, one dollar; for searching records and files, for each document necessarily examined, fifty cents; for recording any survey or map other than town plat, for each course, fifty cents; for recording town plat, for each lot or separate subdivision exhibited thereby, twenty-five cents; for each folio of lettering or figuring thereon, or in the certificate and description of the same, one dollar; for recording certificates of marriage, death, divorce or birth, one dollar; for copy of any record or document in his office, the same fees as for recording; for taking acknowledgment, including certificate and seal, for first signature, one dollar; for each additional signature, twenty-five cents; for recording or copying any paper in a foreign language, double the fees as when in English; no map or plat shall be recorded exceeding in size two folios of the usual sized records; for preparing the abstract of unsatisfied mortgages required for the Board of Equalization, for each, twenty-five cents.

A RECORDER HAVING RECEIVED FEES IN ADVANCE FOR RECORDING, INDEXING, etc., of instruments, is bound to record them himself or procure their recordation by his successor, and an action by each person paying such fees will lie against him for such failure. *Davis v. Thompson*, 1 Nev. 17.

SHERIFFS.

2460. SEC. 5. The fees allowed to Sheriffs in the counties of this state [*polling 800 votes or less*] shall be as follows: For serving a summons or complaint, or any other process by which an action or proceeding is commenced, on every defendant, two dollars; for traveling in making such service, per mile, in going only, to be computed in all cases from the court house of the county, fifty cents for the first ten miles, and for each and every additional mile, forty cents; *provided*, that if any two or more papers are required to be served in the same suit, at the same time, where parties live in the same direction, one mileage only shall be charged; for taking bond, or undertaking in any case in which he is authorized to take the same, one dollar and fifty cents; for copy of any writ, process, or other paper, when demanded or required by law, for each folio, thirty cents; for serving every notice, rule, or order, one dollar; for serving a subpoena, for each witness summoned, fifty cents; for traveling, per mile, in serving such subpoena or venire, in going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant; for serving an attachment on property, or levying an execution, or executing an order of arrest, or order for delivery of personal property, three dollars, together with traveling fees, as in cases of summons; for serving an attachment on any ship, boat, or vessel, in proceedings to enforce any lien thereof created by law, five dollars; for making and posting notices and advertising for sale on execution or under any judgment or order of sale, not to include the cost of publication in a newspaper, two dollars; for commissions for receiving and paying over money on execution or process, where lands or personal property has been levied on, advertised, and sold, on the first five hundred dollars, four per cent; not exceeding one thousand dollars, but over five hundred dollars, two per cent; on all over one thousand dollars and not exceeding fifteen hundred dollars, and on all sums above that amount, one per cent; for commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, on the first thousand dollars, one per cent; on all over that sum, one-half per cent; the fees herein allowed for the levy of an execution, for advertising, and for making and collecting money on an execution, shall be collected from the defendants by virtue of such execution, in the same manner as the same may be therein directed to be made; for drawing and executing every Sheriff's deed, to be

paid by the grantee, who shall, in addition, pay for the acknowledgment thereof, five dollars; for serving a writ of possession, or restitution, putting any person into possession entitled thereto, five dollars; for traveling in the service of any process not hereinbefore mentioned, for each mile necessarily traveled, for going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; for attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, five dollars; for bringing up a prisoner on habeas corpus to testify or answer to any court, or for examination as to the cause of his arrest and detention, or to give bail, two dollars; he shall also be allowed such further compensation for his trouble and expense in taking possession of property under attachment or execution or other process, and of preserving the same, as the court from which the writ or order may issue shall certify to be just and reasonable; for holding each inquest or trial of right of property, when required, to include all services in the matter except mileage, ten dollars; for attending on the supreme court, either in person or [by] deputy, to be paid out of the state treasury as other claims, for each day, eight dollars; for every arrest in a criminal proceeding, three dollars; for serving each subpoena in criminal cases, fifty cents; for executing every sentence of death, fifty dollars; for summoning a grand jury of twenty-four persons, fifteen dollars; for summoning each trial jury of twelve persons, six dollars; for each additional juror, fifty cents; for service of any process in [a] criminal case, the same mileage as in civil cases; in serving subpoenas or venire in criminal cases, he shall receive mileage for the most distant only, where witnesses and jurors live in the same direction; for all services in justices' courts, the same fees as are allowed to Constables. *As amended, Stats. 1875, 147.*

1. ALLOWANCE OF FEES FOR SUMMONING JURY—WHEN PROPER. The county from which a criminal case is transferred is liable for the fees of the Sheriff in summoning a jury upon a special venire for that particular case. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

SHERIFF'S FEES—SUMMONING A JURY—MILEAGE. When a venire is issued to a Sheriff for thirty jurors, and he finds only twenty-four: *Held*, that he was entitled to his fees "for miles actually traveled in attempting to find and serve jurors whose names appeared upon the venire, but who could not be found and served." *Id.*

TAKING PRISONERS BEFORE COURT. The Sheriff is not entitled to any compensation for bringing the defendant into court during the trial. *Id.*

ATTENDANCE ON COURT. The Sheriff is entitled to five dollars for each day's attendance. He cannot charge extra for a night session. *Id.*

SERVICE OF SUBPENA IN ANOTHER COUNTY. The Sheriff is not authorized by the statute to serve a subpoena upon witnesses residing in any other county, except it is within the same judicial district. *Id.*

2. SHERIFFS' FEES—CONTRACT. If a Sheriff, for the sake of obtaining employment, agrees in advance to render official services for a party to a suit, and to receive nothing unless such party recovers in the action, he will be bound by his agreement and cannot recover his fees without showing that such party did recover in the suit. *Baker v. McLeod*, 14 Nev. 148.

3. *Feusier v. Virginia City*, 3 Nev. 58; *Swift v. Doron*, 6 Nev. 125.

CORONERS.

2461. SEC. 6. The fees of Coroners [*in counties polling 800 votes or less*] shall be as follows: For all services in summoning a jury of inquest, three dollars; for swearing a jury, fifty cents; for issuing warrant of arrest, seventy-five cents; for issuing subpoena to each witness, twenty cents; for each mile necessarily traveled in going to the presence of the dead body, twenty-five cents; for swearing each witness, twenty cents; for taking down testimony, per folio, twenty cents; for each day necessarily employed in holding an inquest, five dollars. All of said fees shall be paid out of the county treasury as other demands. For all services by him while acting as Sheriff, the same fees as are allowed to Sheriffs for similar services. *As amended, Stats. 1893, 24.*

CONSTABLES.

2462. SEC. 7. The following fees shall be allowed to Constables [*in counties polling 800 votes or less*]: For serving summons or other process by which suit is commenced in civil cases, one dollar; for summoning a jury before a Justice of the Peace, two dollars; for taking a bond or undertaking, one dollar; for serving an attachment against the property of [a] defendant, two dollars; for serving subpoenas, for each witness, twenty-five cents; for summoning and swearing a jury to try the rights of property, and taking the verdict, two dollars; for receiving and taking care of property on execution, attachment, or order, his actual necessary expenses, to be allowed by the Justice who issued the execution, upon the affidavit of the Constable that such charges are correct, and the expenses necessarily incurred; for [a] copy of any writ, process, or other paper, when demanded or required by law, per folio, thirty cents; for drawing and executing every Constable's deed, to be paid by the grantee, who shall also pay the acknowledgment thereof, five dollars; for each certificate of sale of real estate under execution, one dollar; for collecting all sums on execution, to be charged against the defendant in execution, two per cent; in levying an execution or executing an order of arrest in civil cases, or order for the delivery of personal property, with traveling fees as for summons, two dollars; for making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper, two dollars; for mileage in serving summons, attachment, execution, order, venire, subpoena, or other process in civil cases, for each mile necessarily traveled, in going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; *provided*, that when two or more persons are served in the same suit, mileage shall only be charged for the most distant, if they live in the same direction; for service and travel in criminal cases, the same fees as are allowed Sheriffs for like services; for all other services, except for attending court, the same fees as are allowed Sheriffs for similar services. *As amended, Stats. 1875, 149.*

The above section does not apply to Ormsby, Humboldt, Elko nor Eureka counties. See Stats. 1885, 129; 1887, 76.

WITNESSES.

2463. SEC. 8. Witnesses required to attend in any of the courts of this state [*in counties polling 450 votes or less*] shall be entitled to the following fees: For attending in any civil suit or proceeding, before any court of record, referee, Commissioner, or Justice of the Peace, for each day, three dollars; for traveling to the place of trial, fifty cents per mile; *provided*, that no person shall be obliged to testify in a civil action unless his fees and mileage have been tendered him, or he shall not have demanded the same; *and, provided further*, that no person shall be obliged to testify in a civil action unless his fees have been tendered him, if he shall demand the same, for mileage and one day's attendance; for each subsequent day's attendance the witness is entitled to demand, in advance, his fees from the party in whose favor he has been subpoenaed, and in case of refusal, is exonerated from further attendance; witness fees, in civil cases, shall be taxed as disbursement costs against the defeated party, upon proof, by affidavit, that the disbursements have actually been made; costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees for attendance as a witness in his own behalf. This provision shall be held to apply to courts of Justices of the Peace, as well as to all other courts and judicial proceedings. For criminal cases, no witness fees shall be allowed.

Meagher v. Van Zandt, 18 Nev. 230.

JURORS.

2464. SEC. 9. Fees shall be allowed to jurors [*in counties polling 450 votes or less*] as follows: For each day, to be paid in civil cases by the party in whose favor the verdict is rendered, but to be recoverable as costs from the losing party.

three dollars; excepting in justice's courts, when the fee shall be two dollars. If, in any trial in a civil action, before any court, the jury be from any cause discharged without finding a verdict, the fees of such jury shall be paid by the plaintiff, but may be recovered back as costs if he afterward obtain judgment; until they are paid, no further proceedings shall be had in the action. No person shall receive any fees for serving as a juror on a Coroner's inquest. No fees shall be allowed to grand or trial jurors in criminal cases.

1. JURORS ENTITLED TO COMPENSATION. Jurors are entitled to compensation for the time they are in attendance on the court, whether impaneled for the trial of causes or not, except when they are impaneled in the trial of a criminal case, and they reside within five miles of the court house. *Thornburg v. Hermann*, 1 Nev. 473.
2. JUROR'S CLAIM FOR FEES MUST BE AUDITED. A juror's claim for fees on the certificate of the Clerk should be audited like any other demand against the county. *Id.*
3. JURORS' FEES—ATTENDANCE FIRST DAY. The county from which a criminal cause is transferred is properly chargeable for one day's attendance of each juror present on the first day of the trial of the case. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.
4. *Gillette v. Sharp*, 7 Nev. 245.

COUNTY AUDITORS.

2465. SEC. 10. The fees of County Auditors [*in counties polling 800 votes or less*] shall be as follows: For filing Treasurer's receipts and issuing licenses, to be paid by the party, fifty cents; the County Auditor shall receive for all services rendered by him in the discharge of the duties imposed on him by law, other than those especially enumerated, for each folio, thirty cents; for filing and indorsing each paper, twenty-five cents, except the property schedule rendered him by the Assessor, for which he shall receive no fees.

SEC. 11 (Judges and Clerks of Election) superseded, Sec. 1620.

JUSTICES OF THE PEACE.

2466. SEC. 12. Justices of the Peace [*in counties polling 800 votes or less*] shall be allowed the following fees for their services: For filing each paper, twenty-five cents; for issuing any writ or paper, by which suit is commenced, one dollar; for entering cause in docket, fifty cents; for subpoena to each witness, twenty-five cents; for administering oath or affirmation, twenty-five cents; certifying to the same, twenty-five cents; for issuing writ of attachment or arrest, or order for the delivery of property, two dollars; for entering any final judgment, per folio, for the first folio, one dollar; for each additional folio, fifty cents; for taking and approving any bond or undertaking required by law to be taken or approved by him, one dollar; for issuing a venire, one dollar; for taking deposition, per folio, twenty-five cents; for issuing commissions to take testimony, one dollar; for copy of any judgment, order, docket, proceeding or paper in his office, per folio, twenty-five cents; for entering satisfaction of judgment, fifty cents; for issuing execution, one dollar; for taking acknowledgments of deeds or other instruments, including certificates, for the first name, one dollar; for each subsequent name, twenty-five cents; for issuing supersedeas to an execution, one dollar; for making up and transmitting transcript and paper on appeal, two dollars; for issuing search warrant, one dollar; for celebrating marriage and returning certificate to the Recorder, five dollars; for issuing writ of restitution, one dollar; for all services and proceedings in a criminal action, the same fees as are allowed in civil cases, but in no case shall there be a charge against the county exceeding in any one case the sum of ten dollars; *provided*, that in preliminary examinations in criminal cases, the Justice of the Peace, sitting as a committing magistrate, shall be allowed, in addition to other fees allowed by law, fifty cents for the first folio, and twenty-five cents for each additional folio; for taking bail after commitment in criminal cases, to be collected from the defendant, one dollar; for entering any cause without process, one dollar; for entering judgment by confession, as in the district court, three dollars; for each motion, exception, rule, order,

default, dismissal, discontinuance or nonsuit, and for filing each paper required to be filed, twenty-five cents. *As superseded, Stats. 1867, 101; 1895, 20.*

The Act of 1867, 101, is repealed by Sec. 42 of the following Act, but it is amended by Act of 1895, 20, which latter Act is given here.

Query: Does an amendment to a repealed Act stand?

The above section does not apply to Ormsby, Humboldt, Elko, nor Eureka counties, see Stats. 1885, 129; 1887, 76.

Secs. 13 and 14 identical with Secs. 14 and 15 of following Act.

NOTARIES PUBLIC.

2467. SEC. 15. The fees of Notaries Public [*in counties polling 800 votes or less*] shall be as follows: For drawing and copying every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft or check, two dollars; for drawing and serving every notice of non-payment of a promissory note, of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar; for drawing an affidavit, deposition, or other paper, for which provision is not herein made, for each folio, thirty cents; for taking an acknowledgment, or proof of a deed, or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents; for administering an oath or affirmation, twenty-five cents; for every certificate, to include writing the same, and the seal, fifty cents.

Secs. 16-29, inclusive, are superseded by Secs. 17, et seq., of the following Act.

N. B. Sections 8 and 9 of the following Act (relative to witnesses and jurors) apply to counties polling over 450 votes. The rest of the Act applies to counties polling over 900 votes, see Sec. 2506. For fees prescribed in other counties, see Sec. 2457, et seq. See note Secs. 3, 7 and 13 of this Act; special Acts for Ormsby county, Stats. 1887, 126; 1897, 19.

An Act to regulate fees and compensation for official and other services in the State of Nevada, and to repeal all other Acts in relation thereto.

Approved February 27, 1883, 56.

2468. SECTION 1. The several officers and persons named in this Act may demand and receive for their services rendered in discharging the duties imposed upon them by law, the fees and compensation hereafter specified.

CLERK OF THE SUPREME COURT.

2469. SEC. 2. The fees of the Clerk of the Supreme Court shall be as follows: For entering any motion, rule, or order, one dollar and twenty-five cents; for filing each transcript of a record from an inferior court, three dollars; for entering judgment, for the first folio, one dollar and fifty cents, for each subsequent folio, seventy-five cents; for each certificate given at request and under seal, one dollar and fifty cents; for copy of recorded opinion of court, or other papers, for each folio, twenty cents; for entering each cause on calendar and making copy for the bar, seventy-five cents; for every remittitur or mandate, for each folio, twenty cents; for searching records or files in his office, seventy-five cents for each term's proceedings, but no charge shall be made to suitors or their attorneys; for filing each paper, thirty cents; for certificate of admission as attorney or counselor, and sealing the same, ten dollars; for administering each oath or affirmation, thirty cents; for taking and writing any acknowledgment, seventy-five cents (including seal) for the first signature, and twenty-five cents for each additional signature; for recording opinions of the court, twenty cents per folio; for issuing any process of court, including seal, one dollar and fifty cents; for each certificate of declaration to become a citizen of the United States, and for making a record thereof, two dollars and fifty cents; for each certificate of citizenship, taking proofs in regard thereto and making record thereof, five dollars.

Additional fees for admission of attorney, see Secs. 1530 and 2614.

COUNTY CLERKS.

2470. SEC. 3. The County Clerks of the several counties in this state [*polling more than 800 votes*] shall be entitled to fees as follows: For entering each suit on the Clerk's register of actions, and making the necessary entry therein during trial, seventy-five cents; for filing each paper, fifteen cents; for issuing summons, seventy-five cents; for entering every appearance, fifty cents; for entering return of every writ or process, fifty cents; for issuing subpoena, for first witness, fifty cents, and for each additional witness, ten cents; for entering each cause on the calendar and making a copy thereof, for each term of the district court, seventy-five cents; for entering every motion, exception, rule, order or default, thirty cents; for entering every discontinuance, dismissal or nonsuit, thirty cents; for calling and swearing every jury, fifty cents; for administering every oath or affirmation, fifteen cents; for receiving and entering each verdict of a jury, fifty cents; for entering every final judgment, for the first folio, seventy-five cents, and for each subsequent folio, twenty cents; for filing judgment roll, thirty cents; for docketing judgment, against each judgment debtor, thirty cents; for issuing execution, seventy-five cents; for entering satisfaction of judgment, for each debtor, thirty cents; for entering every notice of appeal, thirty cents; for copying any proceeding, record or paper, for each folio, twenty cents; for receiving and entering every remittitur from the supreme court, and accompanying papers, thirty cents; for every certificate, fifty cents; for issuing every commission to take testimony, seventy-five cents; for issuing every process under seal, other than subpoenas, seventy-five cents; for every certificate under seal, fifty cents; for issuing letters testamentary, seventy-five cents; for writing and posting notices when required, for each copy, thirty cents; for recording all instruments, for each folio, twenty cents; for searching the file of each year in his office (but not to charge suitors or attorneys), thirty cents; for taking each bond and justification thereof required by law, fifty cents; for taking justification to bond, for each name, thirty cents; for taking acknowledgments of deeds or other instruments, including certificate and seal, for the first name, seventy-five cents, and for each subsequent name, twenty-five cents; for issuing every decree or order of sale of mortgaged property, or writ of injunction, for the first folio, seventy-five cents, and for each subsequent folio, twenty cents; for entering each suit in the plaintiff's and defendant's index, twenty-five cents; for making out naturalization papers, including all necessary oaths, affirmations and certificates, for the first papers, two dollars and fifty cents; for making out naturalization papers, including all necessary oaths, affirmations and certificates, for the final papers, five dollars; for each day's attendance on the Board of County Commissioners, four dollars; *provided*, the sum shall in no case exceed one hundred dollars per annum in the aggregate.

This section does not apply to Eureka county, see Stats. 1891, 38.

State v. Rover, 13 Nev. 17; *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

RECORDERS.

2471. SEC. 4. The following fees to the several County Recorders [*in counties polling over 800 votes*] are hereby established: For receiving, filing, and entering documents required to be recorded, fifteen cents; for filing and entering any paper not to be recorded, thirty cents; for making all necessary indexes to each paper filed or recorded, for each name to be indexed, thirty cents; for recording any instrument, paper, or document, for each folio, twenty cents; for every certificate under seal, seventy-five cents; for every entry of discharge or assignment of mortgage on the margin of the records, twenty-five cents; for abstract of title, for each document embraced thereby, seventy-five cents; for searching records and files, for each document necessarily examined, twenty-five cents; for recording any survey or map other than town plat, for each corner, thirty cents; for recording town plat, for each lot or separate subdivision exhibited thereby, twenty cents; for each folio of lettering or figuring thereon, or in the certificate and

description of the same, fifty cents; for recording certificates of marriage, death, divorce, or birth, fifty cents; for copying of any document or record in his office, for each folio, twenty cents; for taking acknowledgment, including certificate and seal, for the first signature, seventy-five cents; for each additional signature, twenty-five cents; for recording or copying any paper in a foreign language, double the fees as when in English; no map or plat shall be recorded exceeding in size two folios of the usual sized records; for preparing the abstract of unsatisfied mortgages, when requested by the Board of Equalization, for each, twenty-five cents.

Davis v. Thompson, 1 Nev. 17.

SHERIFFS.

2472. SEC. 5. The fees allowed to Sheriffs in the several counties of this state [*polling over 800 votes*] shall be as follows: For serving a summons and complaint or any other process by which an action or proceeding is commenced, on every defendant, one dollar and fifty cents; for traveling in making such services, per mile, in going only, to be computed in all cases from the court house of the county, forty cents per mile; *provided*, that if any two or more papers are required to be served in the same suit, at the same time, where parties live in the same direction from the court house, one mileage only shall be charged; for taking bond or undertaking in any case in which he is authorized to take the same, one dollar; for copying any writ, process, or other paper, when demanded or required by law, for each folio, twenty-five cents; for serving every notice, rule or order, fifty cents; for serving a subpoena, for each witness summoned, twenty-five cents; for traveling, per mile, in serving such subpoena or venire, in going only, forty cents per mile; but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant; for serving an attachment on property or levying an execution, or executing an order of arrest, or order for delivery of personal property, two dollars, with traveling fees as in cases of summons; for serving an attachment on any ship, boat, or vessel in proceedings to enforce any lien thereon, created by law, four dollars; for making and posting notices, and advertising for sale, on execution or order, any judgment or order of sale, not to include the cost of publication in a newspaper, one dollar and fifty cents; for commissions for receiving and paying over money on execution or process, where lands or personal property have been levied on, advertised and sold, on the first five hundred dollars, three per cent; not exceeding one thousand dollars, but over five hundred, one and one-half per cent; and on all sums over fifteen hundred dollars, three-fourths of one per cent; for commissions for receiving and paying over money on execution without levy, or when the lands or goods levied on shall not be sold, one-half of one per cent. The fees herein allowed for the levy of an execution, for advertising and for making and collecting money on execution, shall be collected from the defendant by virtue of such execution, in the same manner as the same may therein be directed to be made. For drawing and executing every Sheriff's deed, to be paid by the grantee, who shall, in addition, pay for the acknowledgment thereof, three dollars; for serving a writ of possession or restitution, putting any person in possession entitled thereto, three dollars; for traveling, in the service of any process not hereinbefore mentioned, for each mile necessarily traveled, in going only, forty cents per mile; for attending, when required, on any court of record, in person or by deputy, for each day, to be paid out of the treasury, four dollars; for bringing up a prisoner, on habeas corpus, to testify or answer to any court, or for examination as to the cause of his arrest or detention, or to give bail, one dollar and fifty cents. He shall also be allowed such further compensation for his trouble and expense in taking possession of property under attachment or execution, or other process, and of preserving the same, as the court from which the writ or order may issue shall certify to be just and reasonable. For holding each inquest or trial of right of property, when required, to include all services except mileage,

seven dollars and fifty cents; for attending on the supreme court, either in person or by deputy, to be paid out of the state treasury as other claims, for each [day], six dollars; for every arrest in a criminal proceeding, two dollars; for serving each subpoena in criminal cases, forty cents; for executing every sentence of death, fifty dollars; for summoning a grand jury of twenty-four persons, ten dollars; for summoning each trial juror, thirty cents; for service of any process in criminal cases, the same mileage as in civil cases. In serving subpoenas or venires in criminal cases he shall receive mileage for the most distant only, when witnesses and jurors live in the same direction. For all services in justices' courts, the same fees as are allowed to Constables. *As amended, Stats. 1885, 94.*

Washoe Co. v. Humboldt Co., 14 Nev. 123; Baker v. McLeod, 14 Nev. 148; Feusier v. Virginia City, 3 Nev. 58; Swift v. Doron, 6 Nev. 125.

CORONERS.

2473. SEC. 6. The fees of Coroners [*in counties polling over 800 votes*] shall be as follows: For all services in summoning a jury of inquest, three dollars; for swearing a jury, fifty cents; for issuing warrant of arrest, seventy-five cents; for issuing subpoena to each witness, twenty cents; for each mile necessarily traveled in going to the presence of the dead body, twenty-five cents; for swearing each witness, twenty cents; for taking down testimony, per folio, twenty cents; for each day necessarily employed in holding an inquest, five dollars. All of said fees shall be paid out of said treasury as other demands. For all services rendered by him while acting as Sheriff, the same fees as are allowed to Sheriffs for similar services.

CONSTABLES.

2474. SEC. 7. The following fees shall be allowed to Constables [*in counties polling over 800 votes*]: For serving summons or other process by which suit is commenced, in civil cases, seventy-five cents; for summoning a jury before a Justice of the Peace, one dollar and fifty cents; for taking bond or undertaking, seventy-five cents; for serving an attachment against the property of a defendant, one dollar and fifty cents; for serving subpoenas, for each witness, twenty cents; for summoning and swearing a jury to try the rights of property, and taking the verdict, one dollar and fifty cents; for receiving and taking care of property on attachment, execution or order, his actual necessary expenses, to be allowed by the Justice who issued the execution, upon the affidavit of the Constable that such charges are correct, and the expense necessarily incurred; for a copy of any writ, process, or other paper when demanded or required by law, per folio, twenty cents; for drawing and executing every Constable's deed, to be paid by the grantee, who shall also pay for the acknowledgment thereof, three dollars; for each certificate of sale of real estate, under execution, seventy-five cents; for collecting all sums on execution, to be charged against the defendant in execution, one and one-half per cent; for levying an execution or executing an order of arrest in civil cases, or order for the delivery of personal property, with traveling fees, as for summons, one dollar and fifty cents; for making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper, one dollar and fifty cents; for mileage in serving summons, attachment, execution, order, venire, subpoena; or other process in civil cases, for each mile necessarily traveled, in going only, forty cents; *provided*, that when two or more persons are served in the same suit, mileage shall only be charged for the most distant, if they live in the same direction; for service and travel in criminal cases, the same fees as are allowed Sheriffs for similar services.

The above section does not apply to Ormsby, Humboldt, Elko, nor Eureka counties, see Stats. 1885, 129; 1887, 76. For townships casting 1,250 or more votes in 1882, see Stats. 1883, 55; and for townships casting over 1,600 votes in 1890, see Stats. 1891, 128.

WITNESSES.

2475. SEC. 8. Witnesses required to attend in any of the courts of this state [*in counties polling over 450 votes*] shall be entitled to the following fees: For

attending in any civil suit or proceeding before any court of record, referee, Commissioner or Justice of the Peace, two dollars; for traveling to the place of trial, thirty cents per mile for each mile necessarily and actually traveled; *provided*, that no person shall be obliged to testify in a civil action unless his fees and mileage have been tendered him, or he shall not have demanded the same; *and, provided further*, that no person shall be obliged to testify in a civil action unless his fees have been tendered him if he shall demand the same, for mileage and one day's attendance; for each subsequent day's attendance the witness is entitled to demand, in advance, his fees from the party in whose favor he has been subpoenaed, and in case of refusal, is exonerated from further attendance. Witness fees in civil cases shall be taxed as disbursement costs, against the defeated party upon proof, by affidavit, that the disbursements have actually been made. Costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees for attendance as a witness in his own behalf. This provision shall be held to apply to courts of Justices of the Peace, as well as to all other courts and judicial proceedings. For criminal cases no witnesses fees shall be allowed.

JURORS.

2476. SEC. 9. Each person summoned to attend as a grand or trial juror [*in counties polling over 450 votes*] unless he be excused by the court at his own request, from serving on the day he is summoned to attend, shall receive three dollars per day for each day he may be in attendance, and fifteen cents per mile in traveling to and returning from court. In civil cases, the per diem of each juror engaged in the trial of the cause, to be paid by the party in whose favor the verdict is rendered, but to be recoverable as costs from the losing party. In every trial in a civil action before any court, if the jury be from any cause discharged without finding a verdict, the fees of such jury shall be paid by the plaintiff, but may be recovered back as costs if he afterwards obtain judgment. Until they are paid, no further proceedings shall be had in the action. No person shall receive any fees for serving as a juror on a Coroner's inquest, and jurors in justice's courts shall receive but two dollars per day in civil cases; *provided*, that no fees shall be allowed trial jurors in criminal cases in justice's courts. The fees paid to a juror by the parties in a civil case shall be deducted from the amount due him, and the balance only shall become a charge against the county. *As amended, Stats. 1885, 25; 1887, 62.*

1. TRIAL JURORS—COMPENSATION IN CRIMINAL CASES—STATUTE CONSTRUED. Under the provisions of the Act of 1885 (Stats. 1885, 25), trial jurors in the regular panel are entitled to receive from the county mileage, and, in addition per diem, when accepted and sworn in criminal cases. These fees, together with those received in civil cases, constitute their entire compensation for attendance, trial and services rendered. *Phillips v. Eureka Co.*, 19 Nev. 348.

2. *Thornburg v. Hermann*, 1 Nev. 473; *Washoe Co. v. Humboldt Co.*, 14 Nev. 123; *Gillette v. Sharp*, 7 Nev. 245.

COUNTY AUDITORS.

2477. SEC. 10. The fees of County Auditors [*in counties polling over 800 votes*] shall be as follows: For filing Treasurer's receipts and issuing licenses, to be paid by the party, twenty-five cents; the County Auditor shall receive for all services rendered by him in the discharge of the duties imposed on him by law, other than those especially enumerated, for each folio, twenty cents; for filing and indorsing each paper, twenty cents, except the property schedules, for which he shall receive no fees.

SEC. 11 (Judges and Clerks of Election) superseded, Sec. 1620.

SEC. 12 (carrying poll books to Clerk's office) superseded, Sec. 1620.

JUSTICES OF THE PEACE.

2478. SEC. 13. Justices of the Peace [*in counties polling over 800 votes*] shall be allowed the following fees for their services: For filing each paper, fifteen

cents; for issuing any writ or paper by which suit is commenced, seventy-five cents; for entering cause in docket, thirty cents; for subpoena, to each witness, fifteen cents; for administering oath or affirmation, fifteen cents; certifying to the same, fifteen cents; for issuing writ of attachment, or order of arrest, or order for delivering of property, one dollar and fifty cents; for entering any final judgment, per folio, for the first folio, seventy-five cents, for each additional folio, thirty cents; for taking and approving any bond or undertaking required by law to be taken or approved by him, seventy-five cents; for issuing a venire, seventy-five cents; for taking depositions, per folio, twenty cents; for issuing commissions to take testimony, seventy-five cents; for copy of any judgment, order, docket, proceeding, or paper in his office, per folio, twenty cents; for entering satisfaction of judgment, thirty cents; for issuing execution, seventy-five cents; for taking acknowledgments of deeds or other instruments, including certificates, for the first name, seventy-five cents, for each subsequent name, twenty-five cents; for issuing supersedeas to an execution, seventy-five cents; for making up and transmitting transcript and papers on appeal, one dollar and fifty cents; for issuing search warrant, seventy-five cents; for celebrating marriage and returning certificate to Recorder, five dollars; for issuing writ of restitution, seventy-five cents; for all services and proceedings in a criminal action, the same fees as are allowed in civil cases, but in no case shall there be a charge against the county exceeding in any one case the sum of five dollars; for taking bail after commitment in criminal cases, to be collected from the defendant, seventy-five cents; for entering any cause without process, one dollar; for entering judgment by confession as in district court, three dollars; for each motion, exception, rule, order, default, dismissal, discontinuance, or nonsuit, and for filing each paper required to be filed, fifteen cents.

The above section does not apply to Ormsby, Humboldt, Elko nor Eureka counties, see Stats. 1885, 129; 1887, 76. For townships casting 1,250 or more votes in 1882, see Stats. 1883, 54; and for townships casting over 1,600 votes in 1890, see Stats. 1891, 127.

INTERPRETERS AND TRANSLATORS.

2479. SEC. 14. Interpreters and translators [*in all counties*] shall receive such fees as the court by whom they are employed shall certify to be just.

SURVEYORS.

2480. SEC. 15. County Surveyors [*in all counties*] shall be entitled to demand and receive the following fees: For each mile actually run with a compass and chain, five dollars; for each mile actually run with a compass alone, two dollars; for each lot laid out platted in a town or city or town site, two dollars; for each copy of a plat or town site, one dollar; for recording a survey, per folio, thirty cents; for calculating the quantity of each division made in a tract of land (town lots excepted), and for erecting a monument at the corner of any survey, when required, two dollars; for traveling to the place of survey, for each mile, in going only, seventy-five cents, the distance to be computed from where his office is kept to the place of survey; and if such Surveyor shall be required and duly notified, verbally or otherwise, to make other surveys while in the field, he shall only be entitled to mileage from the place last surveyed by him; but if the distance shall be greater than the place last surveyed where his services are required, he shall only be entitled to mileage from the county seat of the county where he lives, and in no case shall constructive mileage be allowed; for ascertaining the location of every town lot in an old survey and measuring and marking the same, three dollars.

SURVEYORS' FEES. Where it is necessary to have a survey of the premises where the crime was committed, in order to properly present the case to the jury, the County Commissioners are authorized to allow a reasonable compensation for such survey. Washoe Co. v. Humboldt Co., 14 Nev. 123.

NOTARIES.

2481. SEC. 16. The fees of Notaries Public [*in counties polling over 800 votes*] shall be as follows: For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange draft or check, two dollars; for drawing and serving every notice of non-payment of a promissory note, the non-payment or non-acceptance of a bill of exchange, order, draft or check, one dollar; for drawing an affidavit, deposition or other paper, for which provision is not herein made, for each folio, twenty cents; for taking an acknowledgment, or proof of deed, or other instrument, to include the seal and writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents; for administering an oath or affirmation, twenty-five cents; for every certificate, to include writing the same and the seal, fifty cents. *As amended, Stats. 1889, 40.*

No Other Fees to Be Charged.

2482. SEC. 17. No other fees shall be charged than those specially set forth herein, nor shall fees be charged for any other services than those mentioned in this Act.

Officers to Keep Books.

2483. SEC. 18. It shall be the duty of each and every one of the officers hereinbefore mentioned to keep severally a book, to be called the fee book, in their respective offices, in which they shall enter all the fees charged by them, and said book shall be open to the inspection of any one desiring to inspect the same, in which shall be stated the fees charged for in detail with the title of the matter, proceeding or action on which they are charged.

Monthly Statement.

2484. SEC. 19. It shall be the duty of the County Clerks, County Recorders, County Surveyors, Sheriffs, Public Administrators, Justices of the Peace, and Constables, on the first Monday in July, in the year of our Lord one thousand eight hundred and eighty-three, and every three months thereafter, to make out and file with the County Commissioners of their several counties a full and correct statement, under oath, of all fees, percentage or compensation, of whatever nature or kind, received in their said several official capacities during the preceding three months, in which statement they shall set forth the cause in which and the services for which such compensations were received; *provided*, that nothing in this Act shall be so construed as to require personal attendance in filing such statements; and such statements may be transmitted by mail, express or otherwise directed to the Clerk of said Board of County Commissioners.

Duty of District Judge.

2485. SEC. 20. It shall be the duty of the District Judge to give this Act specially in charge to the grand jury.

Misdemeanor.

2486. SEC. 21. Any officer who shall violate any of the provisions of the seventeenth, eighteenth, and nineteenth sections of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Unlawful Fees.

2487. SEC. 22. If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and, on conviction, shall be removed from office, and fined in any sum not exceeding one thousand dollars.

To Post Table of Fees, When.

2488. SEC. 23. Every officer whose fees are ascertained and fixed by this Act shall publish and set up in his office fair tables of his fees, according to this Act, within one month from its passage, in some conspicuous place for the inspec-

tion of all persons who have business in his office, upon pain of forfeiting for each day of his omission so to do a sum not exceeding twenty dollars, which may be recovered by any person by action before any Justice of the Peace of the same county, with costs.

Cost of Publication.

2489. SEC. 24. When by law any publication is required to be made by an officer of any suit, process, notice, order or other paper, the cost of such publication shall, if demanded, be tendered by the party to whom such order, process, notice or other papers was granted before such officer shall be compelled to make publication thereof.

Fees in Advance.

2490. SEC. 25. All fees prescribed in this Act shall be payable in advance, if demanded; and if any officer shall not have received any or all of his fees, which may be due him for services rendered by him in any suit or proceedings, he may have execution therefor in his own name against the party or parties from whom they are due, to be issued from the court where the action is pending, upon the order of the Judge or court upon affidavit filed.

COMMISSIONERS OF DEEDS.

2491. SEC. 26. Commissioners of Deeds appointed by the Governors of any of the states of the United States of America, or of any of the territories thereof, to reside in the State of Nevada, may receive for services rendered in this state the compensation hereinafter expressed, and none other, that is to say: For drawing an affidavit, deposition or other paper, for each folio, thirty cents; for administering an oath or affirmation, twenty-five cents; for putting his seal to such instruments, fifty cents; for taking acknowledgment, or proof of deed or other instrument, to include the seal and the writing of the certificate, for the first signature, one dollar, and for each additional signature, fifty cents.

Misconduct.

2492. SEC. 27. Each Commissioner of Deeds residing in this state, shall be subject to all the pains and penalties for official delinquency or extortions, as is provided in this Act for official misconduct.

COURT FEES.

District Court.

2493. SEC. 28. At the time of the commencement of every civil action or other proceeding in the several district courts of this state, the plaintiff shall pay the Clerk of the Court in which said action shall be commenced the sum of three dollars, in gold or silver coin, except as herein otherwise provided. At the commencement of any proceeding in any district court for the purpose of procuring an appointment of administration upon the estate of any deceased person, the party instituting such proceedings shall pay the Clerk of said court the sum of one dollar and fifty cents in gold or silver coin.

Rose v. Richmond Mining Co., 17 Nev. 25.

Appeal, Justice's Court.

2494. SEC. 29. Whenever any appeal shall be taken in a civil action or proceeding from the judgment or decision of the court of a Justice of the Peace, or other tribunal inferior to the district court, the party appealing shall, before the return to said appeal shall be allowed to be filed in the appellate court, pay to the Clerk of such appellate court the sum of one dollar, in gold or silver coin; which said several fees above provided for shall be known as "court fees," and no such action shall be deemed commenced, proceedings instituted, or appeal perfected until the said fees shall be paid as aforesaid.

Appeal to Supreme Court.

2495. SEC. 30. Whenever any appeal from the final judgment or any order

of a district court shall be taken to the supreme court, the party appealing shall, at or before the filing of the transcript on such appeal in the supreme court, pay the Clerk of the Supreme Court the sum of five dollars in gold or silver coin as and for a court fee; and the Clerk of the Supreme Court shall not file any such transcript in his office until such fee is paid.

To Give Receipts and Pay Over Money.

2496. SEC. 31. It shall be the duty of said Clerks, on the demand of any party asking it, to give a receipt to the party paying such fee for the same, specifying the title of the cause in which the same shall be paid and the date and amount of such payment; and it shall be the further duty of the several Clerks of the district courts of this state, on the first Monday of each and every month, to pay over to the County Treasurer of the county all moneys received by them for such court fees, together with a brief note of the cases in which the same were received, which money shall be payable in the District Judge salary fund of the district embraced in the county where the same shall be received.

Clerk of Supreme Court to Pay Over Money.

2497. SEC. 32. The Clerk of the Supreme Court shall, on the first Monday in each month, pay to the State Treasurer all moneys received by him for court fees, rendering to said Treasurer a brief note of the cases in which the same were received. The money so received by the Treasurer shall be placed in the Supreme Judges' salary fund, and the same shall be used for no other purpose.

EXPENSES OF JURORS.

2498. SEC. 33. In all cases when a jury is kept together by order of the court during a trial, or by failure to agree upon a verdict, after the cause has been submitted to them by the court, the expenses of their board and lodging shall be taxed as other disbursements and expenses in favor of the prevailing party; no verdict shall be entered or judgment rendered thereon until the same is paid or tendered. The Clerk shall receive and properly disburse all money paid for the expenses of jurors, as in this section provided to be paid.

MISCELLANEOUS PROVISIONS.

Folio, How Construed.

2499. SEC. 34. The term folio, when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter of a folio, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

Mileage.

2500. SEC. 35. When any Sheriff, Constable or Coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the most distant service.

No Witness Fees for Attorney.

2501. SEC. 36. No attorney or counselor-at-law, in any case, shall be allowed any fees for attending as a witness in such case.

No Charge for Oath of Office.

2502. SEC. 37. No fees shall be charged by any officer for administering and certifying the oath of office.

Mileage, Where Computed From.

2503. SEC. 38. Mileage shall be computed from the court house of the county in all cases where mileage is chargeable by the Sheriff, and for other officers the

same shall be for the actual distance traveled, and every fraction of a mile shall be computed as a mile.

When Not to Charge Fees on Returns.

2504. SEC. 39. No Sheriff or other officers shall be allowed to charge or receive any fee or compensation whatever for the return written upon any summons, subpoena, writ of attachment, execution, order of sale, or other paper; and any officer violating terms of this section shall be indicted, and upon conviction shall be fined in any sum not less than three hundred dollars, and shall upon conviction thereof be removed from office.

Not to Apply to Legislative Officers.

2505. SEC. 40. This Act shall not extend to nor affect any law relating to the salaries or compensation of officers of the senate or assembly of the State of Nevada, nor to the salary of any state or county officer, or deputy thereof.

Application of Act.

2506. SEC. 41. The provisions of section eight and section nine of this Act shall not apply to or affect any county in this state wherein the total vote at the last election did not exceed four hundred and fifty, and the provisions of this Act shall not apply to or affect the fees of the officers of any county in this state wherein the total vote of the last election did not exceed eight hundred, and the same shall apply to all future elections, and it is hereby provided that in such counties "An Act to regulate fees and compensation for official and other services in the State of Nevada," approved March 9, 1865 [see Sec. 2457, et seq.], and the Act amendatory thereto, shall remain in full force and effect. *As amended, Stats. 1893, 103.*

Repeal.

2507. SEC. 42. This Act repeals all other Acts and parts of Acts now in force, relating to fees of officers, which fees are collectible by said officers from the persons for whom said services are rendered.

COURTS OF JUSTICE AND JUDICIAL OFFICERS.

An Act concerning the courts of justice of this state, and judicial officers.

Approved January 26, 1865, 110.

Courts of Justice of the State.

2508. SECTION 1. The following shall be the courts of justice for this state: First, the supreme court; second, the district courts; third, justices' courts; and, fourth, such municipal courts as may from time to time be established by the legislature in incorporated cities or towns.

Justices of Supreme Court.

2509. SEC. 2. The supreme court shall consist of a Chief Justice and two associates. Each Justice hereafter elected or appointed shall be commissioned by the Governor, and before entering upon the discharge of his duties, shall take the constitutional oath of office.

When Elected—Chief Justice.

2510. SEC. 3. The Justices of the Supreme Court shall be chosen at general elections by the qualified voters of the state; one of the Justices shall be chosen at the general election of the year one thousand eight hundred and sixty-six (1866), and at the general election every second year thereafter, and shall hold his office for the term of six years from the first day of January next after his election. The senior Justice in commission shall be the Chief Justice, and in case the com-

mission of any two or more of said Justices shall bear the same date, they shall determine by lot who shall be Chief Justice.

Governor to Fill Vacancies.

2511. SEC. 4. When, from any cause, a vacancy shall occur in the office of a Justice of the Supreme Court, the Governor shall fill the same by granting a commission, which shall continue until the election and qualification of a Justice to fill such vacancy. A Justice to fill a vacancy shall be chosen at the first general election subsequent to the occurrence of the vacancy.

Appellate Jurisdiction.

2512. SEC. 5. The supreme court shall have appellate jurisdiction in all cases in equity, and also in all cases at law in which is involved the title or right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, exceeds three hundred (300) dollars; also, in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone, in all criminal cases in which the offense charged amounts to a felony.

Jurisdiction to Review.

2513. SEC. 6. The supreme court shall have jurisdiction to review upon appeal: First, a judgment in an action or proceeding, commenced in a district court, when the matter in dispute is embraced in the general jurisdiction of the supreme court, and to review upon appeal from such judgment any intermediate order or decision involving the merits and necessarily affecting the judgment; second, an order granting or refusing a new trial in such cases; an order granting or refusing to change the place of trial of an action or proceeding after motion is made therefor in the cases in which that court has appellate jurisdiction, and from an order granting or refusing to grant an injunction or mandamus in the case provided for by law.

To Issue Certain Writs.

2514. SEC. 7. This court, and each of the Justices thereof, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, and also all writs and process necessary to the complete exercise of its appellate jurisdiction; such writs may be issued to any part of the state, and in granting writs of habeas corpus, such court, or a Judge thereof, may issue the writ upon application by or on behalf of any person held in actual custody in any part of the state, and may make such writs returnable before the court, or either of the Justices thereof, or before any district court of the state, or any Judge of said courts.

Power of Court on Appeal.

2515. SEC. 8. This court may reverse, affirm, or modify the judgment or order appealed from as to any or all of the parties, and may, if necessary, order a new trial, or the place of trial to be changed. When the judgment or order appealed from is reversed or modified, this court may make, or direct the inferior court to make, complete restitution of all property and rights lost by the erroneous judgment or order.

Terms of Court.

2516. SEC. 9. There shall be four terms of this court in each year, to commence on the first Mondays of January, April, July, and October. Such terms shall continue until the business before the court is determined, or for such length of time as, in the opinion of the court, the public interest may require.

Two Justices May Pronounce Judgment.

2517. SEC. 10. Two Justices shall constitute a quorum for the transaction of business, excepting such business as may be done at chambers, and the concur-

rence of two Justices who heard the argument shall be necessary to pronounce any judgment, except in chamber business; and if two Justices who have heard the argument do not agree, the case shall be reargued.

Where Court Shall Be Held.

2518. SEC. 11. The supreme court shall hold its sessions at the capital of the state. If a room in which to hold the court, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, be not provided by the state, the court may direct the Sheriff of the county in which it is held to provide such room, attendants, fuel, lights, and stationery, and the expense thereof shall be paid out of the state treasury.

Opinions in Writing.

2519. SEC. 12. All opinions and decisions rendered by the supreme court shall be in writing, signed by the Justices concurring therein, and shall be spread at large on the records of the court kept for that purpose.

THE DISTRICT COURTS.

SECS. 13, 14 and 15 superseded by following Acts.

SEC. 16 is obsolete.

Original and Appellate Jurisdiction.

2520. SEC. 17. The district courts shall, severally, have original jurisdiction in all cases in equity; also, in all cases at law which involve the title, or the right of possession to, or the possession of, real property or mining claims, or the legality of any tax, impost, assessment, toll, or municipal fine; also, in all actions to foreclose mechanics' liens; and in all cases in which the demand, exclusive of interest, or the value of the property in controversy, exceeds three hundred dollars; also, in all cases relating to the estates of deceased persons, and the person and estates of minors, idiots, and insane persons, and of the action of forcible entry and unlawful detainer; and, also, in all criminal cases not otherwise provided for by law; they shall also have final appellate jurisdiction in cases arising in justice's courts, and such other inferior tribunals as may be established by law. The district courts and the Judges thereof, shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction; and also shall have power to issue writs of habeas corpus, on petition by, or on behalf of, any person held in actual custody in their respective districts. *As amended, Stats. 1866, 59.*

Court, Where Held.

2521. SEC. 18. The terms of the district court shall be held at the county seat of the several counties. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the Sheriff to provide such room, attendants, fuel, lights, and stationery, and the expenses thereof shall be a county charge.

Terms of District Court.

2522. SEC. 19. The terms of holding these courts shall be as provided by law in such districts, and such terms shall continue so long as the business may require, or until the day fixed for the commencement of another term in the same district. The court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district. Judgments and orders of the district court may be entered either in term or vacation, in civil cases. *As amended, Stats. 1875, 119.*

Business at Chambers.

2523. SEC. 20. The District Judges shall, at all reasonable times, when not engaged in holding courts, transact such business at chambers as may be done

out of court. At chambers they may try and determine writs of mandamus, certiorari, quo warranto, hear and dispose of motions for new trials, and all applications for writs which are usually granted, in the first instance, upon ex parte application, and may also, in their discretion, hear and determine applications to discharge such orders and writs. They may also hear and determine applications for writs of assistance at chambers.

May Hold Court in Any District, When.

2524. SEC. 21. A District Judge may hold a term in any judicial district in this state, upon the request of the Judge of the district in which such term is to be held; and when, by reason of sickness or absence from the state, or from any other cause, a term cannot be held in a district by the Judge thereof, a certificate of that fact shall be transmitted by the Clerk to the Governor, who shall thereupon direct some other District Judge to hold such term. It shall be the duty of the Judge thus directed to hold such term; *provided*, it will not conflict with his duties in his own district.

Court May Make Rules.

2525. SEC. 22. Each district court shall have power to make rules not inconsistent with the constitution and laws of this state, for its own government and the government of its officers; but such rules shall not be in force until thirty days after their adoption and publication, except for the first terms held under the constitution of the state; and no rule shall be made imposing any tax or charge upon any legal proceeding, except as a penalty upon overruling a demurrer, or making an allowance to any officer for services.

1. RULES OF COURT OBLIGATORY AND BINDING. *Haley v. Eureka County Bank*, 20 Nev. 410; *Lightle v. Ivancovich*, 10 Nev. 41.
2. DISCRETION OF COURT AS TO THEIR RULES. *Caples v. C. P. R. Co.*, 6 Nev. 265.
3. RULES OF COURT. What necessary to enforcement, referred to, but not decided. *Smith v. Lee*, 10 Nev. 208.

Charge to Juries.

2526. SEC. 23. District Judges shall not charge juries upon matters of fact, but may state the evidence and declare the law. In stating the evidence, the Judge should not comment upon the probability or improbability of its truth, nor the credibility thereof. If the Judge state the evidence, he must also inform the jury that they are not to be governed by his statement upon matters of fact.

Reduce Decision to Writing.

2527. SEC. 24. A District Judge may be required, in deciding any question of law, to reduce his decision to writing at the time such decision is made, and note any exception thereto, which may be taken by either party, to a trial or proceeding before him.

Jurisdiction of Offenses.

2528. SEC. 25. The district courts shall have jurisdiction to inquire, by the intervention of a grand jury, of all public offenses, committed or triable in their respective districts, to try and determine all indictments found therein, and to hear and determine appeals from justices' or other inferior courts in all cases of a criminal nature.

Powers Over Estates and Guardians.

2529. SEC. 26. The district courts shall have power to open and receive the proofs of last wills and testaments, and to admit them to probate; to grant letters testamentary of administration and guardianship, and to revoke the same for cause shown, according to law; to compel executors, administrators, and guardians to render an account when required, or at the period fixed by law; to order the sale of property of estates, or belonging to minors; to order the payment of debts due by estates; to order and regulate all partitions of property or estates of deceased persons; to compel the attendance of witnesses; to appoint appraisers

or arbitrators; to compel the production of title papers or other property of an estate or of a minor, and to make such other orders as may be necessary and proper in the exercise of the jurisdiction conferred upon them by law.

Powers of Court in Vacation.

2530. SEC. 27. The District Judge shall have power, in vacation, to appoint appraisers, to receive inventories and accounts to be filed in his court; to suspend the powers of executors, administrators, or guardians, in cases allowed by law; to grant special letters of administration or guardianship, to approve claims and bonds, and to direct the issuance from his court of all writs and process necessary to the exercise of his powers over the estates of deceased persons, and over the property and persons of minors, idiots, and insane persons.

THE JUSTICES' COURTS.

SECS. 28, 29, and 30 repealed, Stats. 1866, 125, and the Act of 1866 was repealed, 1869, 288.

Jurisdiction of Offenses.

2531. SEC. 31. Justices' courts shall also have jurisdiction of the following public offenses, committed within the respective counties in which such courts are established: First, petit larceny; second, assault and battery, not charged to have been committed upon a public officer in the discharge of his duties, or with intent to kill; third, breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

Terms of Office and Election.

2532. SEC. 32. Justices of the Peace shall hold their offices for two years, and until their successors are elected and qualified. They shall be chosen by the electors of their respective townships or cities, at the general election in the year one thousand eight hundred and sixty-five (1865), and the general election every two years thereafter, and shall enter upon their duties on the first Monday of January succeeding their election. Whenever a vacancy shall occur in the office of a Justice by death, resignation, or otherwise, such vacancy shall be filled by appointment of the Board of County Commissioners of the proper county. The Justice appointed to supply a vacancy shall hold his office for the unexpired term of his immediate predecessor. Each Justice, before entering upon the discharge of his duties, shall take the constitutional oath of office, and shall execute a bond to the state in the sum of five thousand (5,000) dollars, conditioned for the faithful performance of his duties, and file the same with the County Clerk.

Recorders' Courts—Jurisdiction.

2533. SEC. 33. Recorders' courts, which are already established, or which may hereafter be established in any incorporated city of this state, shall have jurisdiction: First—Of an action or proceeding for the violation of any ordinance of their respective cities. Second—Of an action or proceeding to prevent or abate a nuisance within the limits of their respective cities. Third—Of proceedings respecting vagrants and disorderly persons.

Further Jurisdiction.

2534. SEC. 34. The recorders' courts already established, or which may hereafter be established, shall also have jurisdiction of the following public offenses, committed in their respective cities: First, petit larceny; second, assault and battery, not charged to have been committed upon a public officer in the execution of his duties, or with intent to kill; third, breaches of peace, riots, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or by both such fine and imprisonment.

Where Court to Be Held.

2535. SEC. 35. A recorder's court shall be held by a Judge who shall be desig-

nated as the "Recorder of the City," and said court shall be held at such place in the city within which it is established as the government of such city may by ordinance direct.

Election of Recorder.

2536. SEC. 36. The Recorders shall be chosen by the electors of their respective cities, on a day to be fixed by the government of such cities, and shall hold their offices for one year, unless a longer period be fixed in the Acts incorporating such cities; in which case, for such period fixed. Before entering upon their duties, they shall take the constitutional oath of office.

Compensation.

2537. SEC. 37. The Recorders shall receive compensation, to be fixed by the charter, or when not so fixed by the government of their respective cities, to be paid by such cities quarterly, in equal proportions. Such compensations shall not be increased or diminished during the period for which they are elected.

Powers and Duties.

2538. SEC. 38. The Recorders shall possess the powers and exercise the duties of committing magistrates, in the criminal causes in which the courts held by them have no jurisdiction by this Act; and as such magistrates, they may examine, commit or discharge all persons brought before them, as the justice and law of the case may require.

May Issue Process.

2539. SEC. 39. Recorders and recorders' courts may issue all legal process, writs, and warrants necessary and proper to the complete exercise of their powers.

Court Always Open.

2540. SEC. 40. There shall be no terms in recorders' courts. These courts shall always be open.

General Provisions Respecting the Courts of Justice and Judicial Officers.

ARTICLE I.

Courts of Record.

2541. SEC. 41. The supreme court, the several district courts, and such other courts as the legislature shall designate, shall be courts of record.

Proceedings Public.

2542. SEC. 42. The sittings of every court of justice shall be public, except as provided in the next section.

Proceedings Private, When.

2543. SEC. 43. In an action for divorce the court may direct the trial of any issue of fact joined therein to be private, and upon such directions all persons may be excluded, except the officers of the court, the parties, their witnesses, and counsel.

Powers of Court.

2544. SEC. 44. Every court shall have power to preserve and enforce order in its immediate presence; to enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority; to compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its Judge out of court in an action or proceeding pending therein; to control, in furtherance of justice, the conduct of its ministerial officers.

ARTICLE II.

When Judge Disqualified.

2545. SEC. 45. A Judge shall not act as such in an action or proceeding to which he is a party, or in which he is interested. Second, when he is related to

either party by consanguinity or affinity within the third degree. Third, when he has been attorney or counsel for either party in the action or proceeding, but this section shall not apply to the arrangement of the calendar, or the regulation of the order of business.

INTEREST OF JUDGE DISCUSSED AT LENGTH. *Shaw v. Noyes*, 24 Nev.

Not to Act, When.

2546. SEC. 46. A Judge of the Supreme Court, or of the district courts, shall not act as attorney or counsel in any court, except in an action or proceeding to which he is a party on the record.

Partner Not to Act.

2547. SEC. 47. A Judge or Justice of the Peace shall not have a partner acting as attorney or counsel in any court in this state.

Absence from State.

2548. SEC. 48. A Judge of the Supreme Court, or of the district court, shall not absent himself from this state for more than ninety consecutive days. A violation of the provisions of this section shall work a forfeiture of such office. *As amended, Stats. 1865, 185.*

ARTICLE III.

Courts, Where Held.

2549. SEC. 49. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Non-Judicial Days—What May Be Done.

2550. SEC. 50. No court shall be open, nor shall any judicial business be transacted on Sunday, on New Year's Day, on Washington's Birthday, on the thirtieth of May, commonly known as Memorial Day, on the Fourth of July, on the thirty-first day of October, to be known as "Admission Day," on Thanksgiving Day, on Christmas Day, or on a day on which the general election is held, except for the following purposes:

First—To give, upon their request, instructions to a jury then deliberating on their verdict.

Second—To receive a verdict or discharge a jury.

Third—For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

Fourth—For the issue of a writ of attachment, which writ may be issued on each and all of the days above enumerated upon the plaintiff or some person in his behalf, setting forth in the affidavit required by law for obtaining said writ, the additional averment, as follows: That the affiant has good reason to believe, and does believe, that it will be too late for the purpose of acquiring a lien by said writ to wait till a subsequent day for the issuance of the same. And all proceedings instituted, and writs issued and official acts done on any of the days above specified, under and by virtue of this section, shall have all the validity, force and effect of proceedings commenced on other days, whether a lien be obtained or a levy made under and by virtue of said writ. *As amended, Stats. 1866, 53; 1883, 90; 1891, 20.*

1. **ORDERS MADE ON SUNDAY—AUTHORITY OF COURT.** The provisions of the statutes of this state authorizing the court "to receive a verdict or discharge a jury" carries with it the power to have the verdict recorded, and authorizes the court to make such other orders as may be incident to the power given, such as designating a day when it would pronounce judgment upon the verdict. *State v. Rover*, 13 Nev. 17.

2. **ATTACHMENT.** Suit can be commenced and writ served on Sunday when required affidavit made. *Levy v. Elliot*, 14 Nev. 435.

3. **UNDERTAKING ON APPEAL** executed on Sunday is valid. *State v. Cal. M. Co.*, 13 Nev. 203.

4. **SUNDAY—NON-JUDICIAL DAY.** A judgment of a Justice of the Peace, rendered upon the trial of a criminal case, on Sunday, is null and void. *White v. Pergue*, 15 Nev. 146.

Terms, Where Held.

2551. SEC. 51. Every court of justice, except justice's or recorder's court, shall sit at the county seat of the county in which it is held; justices' courts shall be held in their respective townships, precincts, or cities, and recorders' courts in their respective cities.

Adjournment of Court in Certain Cases.

2552. SEC. 52. If no Judge attend on the day appointed, or to which court may have been adjourned before noon, the Sheriff or Clerk shall adjourn the court until the next day at ten o'clock, and if no Judge attend on that day before noon, the Sheriff or Clerk shall adjourn the court until the following day, and so on from day to day for one week; if no Judge attend for one week, the Sheriff or Clerk shall adjourn the court for the term; *provided*, that at any time before or during the week which the Sheriff or Clerk is authorized to adjourn the court, the Judge, while in or out of the state, shall order by letter or telegram to adjourn the court to any day within the term, the Sheriff or Clerk shall adjourn the court to the day so ordered. *As amended, Stats. 1869, 136; 1881, 165.*

Place of Holding Court May Be Changed.

2553. SEC. 53. A Judge authorized to hold or preside at a court appointed to be held in a city, precinct, or town, may, by an order filed with the County Clerk, and published as he may prescribe, direct that the court be held or continued at any other place in the city or county than that appointed, when war, pestilence, or other public calamity, or the dangers thereof, or the destruction of the building appointed for holding the court, may render it necessary; and may, in the same manner, revoke the order, and, in his discretion, appoint another place in the same city or county for holding the court.

Parties to Appear.

2554. SEC. 54. When the court is held at a place appointed as provided in the last section, every person held to appear at the court shall appear at the place so appointed.

Courts to Have Seals.

2555. SEC. 55. Each of the following courts, and no other, shall have a seal: First, the supreme court; second, the district courts.

Seal, How Procured—Words.

2556. SEC. 56. The several district courts for which separate seals have not been heretofore provided, or the respective Judges thereof, by an order, in writing, filed with the respective Clerks of such courts, shall direct such Clerks to procure such seals, and shall have the following inscriptions surrounding the same: For the district courts: "District Court, ----- District, County of -----," inserting the number of the district and the name of the county, and any such order that may have been made by any Judge of a district court, shall have the same effect as if it had been made in open court. *As amended, Stats. 1879, 36.*

Private Seal.

2557. SEC. 57. Until the seals, devised as provided in the last section, are procured, the Clerk of each court may use his private seal whenever a seal is required.

Clerk to Keep Seal.

2558. SEC. 58. The Clerk of each court shall keep the seal thereof.

Seal to Be Affixed.

2559. SEC. 59. The seal of the court need not be affixed to any proceedings therein, except: First, to a summons, writ, or commission to take testimony; second, to the proof of a will, or the appointment of an executor, administrator, or guardian; third, to the authentication of a copy of a record or other proceed-

ing of the court, or an officer thereof; fourth, to certificates of acknowledgment, and all final process.

Seal, How Impressed.

2560. SEC. 60. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper and capable of receiving the impression.

ARTICLE V.

Orders, When Refused.

2561. SEC. 61. If an application for an order made to a Judge of a court in which the action or proceeding is pending be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other Judge, except of a higher court; *provided*, that nothing in this section be so construed as to apply to motions refused for any informality in the papers or proceedings necessary to obtain an order.

Violation.

2562. SEC. 62. A violation of the last section may be punished as a contempt; and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of the court in which the action or proceeding is pending.

Taking of Acknowledgment.

2563. SEC. 63. The Judges and Clerks of the supreme court, and of the district courts, shall have power in any part of the state; and Justices of the Peace and Recorders, within their respective cities, precincts, or townships, shall have power to take and certify: First, the acknowledgment of conveyances and the satisfaction of a judgment of any court; second, an affidavit to be used in any court of justice of this state.

Vacancy Not to Affect Action.

2564. SEC. 64. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

English Language to Be Used.

2565. SEC. 65. Every written proceeding in a court of justice in this state, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

An Act to create judicial districts in the State of Nevada, provide for the election of District Judges therein and fix their salaries.

Approved March 18, 1891, 64.

Districts Created.

2566. SECTION 1. The State of Nevada is hereby divided into five judicial districts. The counties of Storey, Douglas, Esmeralda, Ormsby, and Lyon shall constitute the First Judicial District; the counties of Washoe and Churchill shall constitute the Second Judicial District; the counties of Nye, Lander, and Eureka shall constitute the Third Judicial District; the counties of Elko, White Pine, and Lincoln shall constitute the Fourth Judicial District, and the county of Humboldt shall constitute the Fifth Judicial District. *As amended, Stats. 1897, 80.*

Time of Election.

2567. SEC. 2. There shall be elected at the general election in the year Anno Domini eighteen hundred ninety-eight, one District Judge in and for each judicial district created by section one of this Act, and their successors shall be elected at the general election every four years thereafter. The election of District Judges

An Act to regulate the issuance of court orders.

Approved February 10, 1885, 21.

Money Paid, How.

2576. SECTION 1. In every case in which the court or District Judge is authorized to draw any money to be paid out of the county treasury, such order shall be first presented to the County Auditor, who shall number and register the same, and shall issue his warrant on any fund in the county treasury not otherwise specially appropriated or set apart.

An Act providing offices for the District Judges in this state.

Approved March 3, 1869, 115.

Offices for District Judges.

2577. SECTION 1. Offices shall be provided and furnished by, and at the expense of the several counties in this state, for the several District Judges therein; and whenever the County Commissioners of any county in this state shall neglect or refuse to provide and furnish an office for the use of the District Judge, it shall be lawful for such District Judge to make an order (which shall be entered upon the minutes of the court), requiring the Sheriff to provide and furnish such office; and the necessary expenses incurred therein shall become a legal and valid claim against said county.

An Act to prevent unnecessary delay in rendering judicial decisions by the courts of this state.

Approved March 5, 1891, 28.

Affidavit of Judge.

2578. SECTION 1. No Justice of the Supreme Court nor Judge of the District Court in this state shall, after the first day of July, A. D. one thousand eight hundred and ninety-one, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer authorized to administer oaths that no cause in his court remains undecided that has been submitted for the period of ninety days.

To Be Filed With Controller.

2579. SEC. 2. The said affidavit shall be filed with the State Controller, and shall constitute his authority for drawing and delivering the monthly salary warrant for any such Justice or Judge.

An Act to restore lost records.

Approved February 16, 1881, 38.

How Restored.

2580. SECTION 1. In all cases where the records of any judgments, which said judgments have not expired by limitation, or other records of any court of either general or limited jurisdiction in this state, and all records of proceedings taken by, or in behalf of any alien to become a citizen of the United States in this state, have been lost or destroyed, the same may be restored and replaced, and become the records of said courts, in the manner prescribed in this Act. *As amended, Stats. 1897, 91.*

Affidavit of Interested Party, What to State.

2581. SEC. 2. When any record of any court in this state has been lost, destroyed, or defaced, so that its contents cannot be distinguished, the same may be restored by any party interested, by making and filing an affidavit in said court whose records it is proposed to restore, and that said affidavit shall set forth the nature of the action, demand or claim upon which said lost, destroyed, or

defaced records was obtained, about the date of the entry of its loss or destruction as near as may be, and when the record sought to be restored is that of a judgment, the affidavit shall set forth the amount and character of the judgment as nearly as can be ascertained, and in all cases the affidavit shall set forth that the restoration of said record or records is necessary to secure the legal rights of the affiant, or of some other person, for whose benefit the record or records is sought to be restored. *As amended, Stats. 1897, 91.*

Court to Issue Citation.

2582. SEC. 3. Upon making and filing of the said affidavits, the court or the Judge thereof shall thereupon issue a citation to all parties interested, notifying them to appear and show cause why the record referred to in said case should not be restored; and that in said notice or citation shall be set forth, that the motion to restore said lost record is based upon affidavit on file in said court, and if the hearing of said case is before the district court, ten days' notice shall be given to all parties interested, and if before a justice court not less than five nor more than ten days' notice shall be required; *provided*, that in all cases of citizenship or naturalization no citation is required to issue. *As amended, Stats. 1889, 23; 1897, 92.*

Service of Summons.

2583. SEC. 4. When parties upon whom citation is required to be served reside outside of the county, but within this state, service shall be made in the same manner as is prescribed by law for the service of summons in civil actions in this state, and upon a citation issued from a justice's court under this Act, the service of the same upon parties residing out of the county, but within the state, shall be in the same manner as that required for the service of summons in civil actions in the district courts, and where the parties upon whom service is required to be made reside out of this state, service shall be made by publication, in the same manner as is required for service of summons in civil cases in the courts of this state.

Counter Affidavits.

2584. SEC. 5. In all cases under this Act the parties interested shall, upon said motion, have an opportunity of appearing and using counter affidavits and contesting said application, and if it appear to the court at the hearing that the record in said case is lost, destroyed, or defaced, and what its contents were, it may then make, order, or cause to be made, a new roll or record, corresponding to the old one as near as can be done, and enter the same as of record in said court, and the matter thus substituted will thenceforward be received in all courts and given in all respects the same effect as though it were the original record.

Limitation.

2585. SEC. 6. Where any record of a judgment has been restored under this Act, said judgment shall not continue or extend beyond the limitation prescribed by law at the time the original judgment so restored was entered.

An Act to authorize District Judges in certain cases to sign records and settle statements.

Approved February 19, 1867, 59.

After Term of Office Expires.

2586. SECTION 1. It shall be lawful, from and after the passage of this Act, for any District Judge of this state, at any time within twelve months after the expiration of his term of office, or within twelve months after he shall, from any cause, have ceased to exercise the duties of such office, to sign any records of his court that he may have left unsigned at the time of going out of office; also to sign and settle statements on motions for new trials, and statements and bills of

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Approved February 10, 1885, 21.

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To Be Filed With Controller.

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Affidavit of Interested Party, What to State.

2581. SEC. 2. When any record of any court in this state has been lost, destroyed, or defaced, so that its contents cannot be distinguished, the same may be restored by any party interested, by making and filing an affidavit in said court whose records it is proposed to restore, and that said affidavit shall set forth the nature of the action, demand or claim upon which said lost, destroyed, or

defaced records was obtained, about the date of the entry of its loss or destruction as near as may be, and when the record sought to be restored is that of a judgment, the affidavit shall set forth the amount and character of the judgment as nearly as can be ascertained, and in all cases the affidavit shall set forth that the restoration of said record or records is necessary to secure the legal rights of the affiant, or of some other person, for whose benefit the record or records is sought to be restored. *As amended, Stats. 1897, 91.*

Court to Issue Citation.

2582. SEC. 3. Upon making and filing of the said affidavits, the court or the Judge thereof shall thereupon issue a citation to all parties interested, notifying them to appear and show cause why the record referred to in said case should not be restored; and that in said notice or citation shall be set forth, that the motion to restore said lost record is based upon affidavit on file in said court, and if the hearing of said case is before the district court, ten days' notice shall be given to all parties interested, and if before a justice court not less than five nor more than ten days' notice shall be required; *provided*, that in all cases of citizenship or naturalization no citation is required to issue. *As amended, Stats. 1889, 23; 1897, 92.*

Service of Summons.

2583. SEC. 4. When parties upon whom citation is required to be served reside outside of the county, but within this state, service shall be made in the same manner as is prescribed by law for the service of summons in civil actions in this state, and upon a citation issued from a justice's court under this Act, the service of the same upon parties residing out of the county, but within the state, shall be in the same manner as that required for the service of summons in civil actions in the district courts, and where the parties upon whom service is required to be made reside out of this state, service shall be made by publication, in the same manner as is required for service of summons in civil cases in the courts of this state.

Counter Affidavits.

2584. SEC. 5. In all cases under this Act the parties interested shall, upon said motion, have an opportunity of appearing and using counter affidavits and contesting said application, and if it appear to the court at the hearing that the record in said case is lost, destroyed, or defaced, and what its contents were, it may then make, order, or cause to be made, a new roll or record, corresponding to the old one as near as can be done, and enter the same as of record in said court, and the matter thus substituted will thenceforward be received in all courts and given in all respects the same effect as though it were the original record.

Limitation.

2585. SEC. 6. Where any record of a judgment has been restored under this Act, said judgment shall not continue or extend beyond the limitation prescribed by law at the time the original judgment so restored was entered.

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exception on appeal to the supreme court, subject to the same regulations and restrictions that now are or hereafter may be prescribed by law.

Same Legal Effect.

2587. SEC. 2. Said records, when thus signed, and said statements, and such bills of exceptions, when thus settled, shall have the same legal force and effect that they would be entitled to had they been signed or settled by the Judge while in the exercise of his office.

Records Legalized.

2588. SEC. 3. Any and all such records signed, and statements or bills of exceptions so signed and settled by any District Judge as aforesaid, since the first day of January, one thousand eight hundred and sixty-seven, are hereby legalized and made as valid to all intents and purposes, as though done since the passage of this Act.

Power Not to Be Taken from Successor.

2589. SEC. 4. This Act shall not be deemed to take from the successors of any District Judge the power to sign any record, or to sign and settle any statement or bill of exceptions, as heretofore authorized by law.

An Act to regulate the appointment and compensation of Bailiff of the Supreme Court.

Approved March 6, 1899, 58.

Justices to Appoint.

2590. SECTION 1. The Judges of the Supreme Court shall appoint the Bailiff for said court.

Compensation for 1899 and 1900.

2591. SEC. 2. For the years 1899 and 1900 the full compensation for said Bailiff shall be three hundred dollars.

Compensation Beginning With 1901.

2592. SEC. 3. Commencing with the year 1901 and every year thereafter the full compensation of said Bailiff shall be one hundred and fifty dollars per annum.

An Act relating to the publication of supreme court decisions and advertising required by the State of Nevada.

Approved March 25, 1897, 165.

Publication of Decisions—State Advertising.

2593. SECTION 1. The Board of State Printing Commissioners shall select some daily newspaper published in the State of Nevada, to publish the Supreme Court Reports and to do all other advertising required by the State of Nevada, said advertising to consist of the Governor's proclamation, publication for rewards for criminals, monthly money accounts, all bids for proposals for supplies required by the state, or any other public institutions, and lists of all bills allowed by the State Board of Examiners, and such other advertising as may be required by law: *provided*, that such newspapers shall contract to do all of the foregoing printing and advertising at a compensation not to exceed the sum of six hundred dollars per annum.

Bonds to Be Given.

2594. SEC. 2. The proprietor of such newspaper entering into this contract shall bind himself to perform the work for two years and give bonds to the State of Nevada in the sum of five hundred dollars for the faithful performance of the contract.

Decisions, When and How Printed.

2595. SEC. 3. Each decision of the supreme court shall be printed in its entirety in a single issue of the paper or supplement, and fifty copies shall be furnished the state free of charge, and delivered to the Clerk of the Supreme Court; printed proofs of the decisions shall be submitted to the Clerk of the Board of Examiners before publication.

An Act to fix the compensation of the Clerk of the Supreme Court.

Approved February 24, 1875, 84.

SECTION 1 superseded, Sec. 1927.

Fees Collected.

2596. SEC. 2. All fees hereafter collected by the Clerk of the Supreme Court as provided by law, shall be paid into the state treasury at the end of every quarter, and shall be apportioned to the general fund.

For fees, see Sec. 2469. For disposition of fees, see Sec. 2497.

Official Bond.

2597. SEC. 3. Said Clerk of the Supreme Court shall execute an official bond, with two or more sureties, made payable to the State of Nevada, in the penal sum of ten thousand dollars; which bond shall be approved by the Board of Examiners, and filed with the Secretary of State.

Statement to Legislature.

2598. SEC. 4. The Clerk of the Supreme Court shall make a full statement of all his proceedings under this Act to each succeeding legislature.

An Act to provide for the publication and distribution of Nevada Reports.

Approved March 1, 1883, 78.

Size Of.

2599. SECTION 1. The decisions of the Supreme Court of the State of Nevada shall be published in volumes of the size, as nearly as may be, of the volume heretofore published, and containing not less than five hundred pages.

Clerk to Prepare Decisions—What to Be Inserted—Printing.

2600. SEC. 2. The Clerk of the Supreme Court shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided (when the same are not sufficiently stated in the opinion), the names of the counsel, and a reference to such authorities as are cited and have a special bearing on the case, and it shall be the further duty of said Clerk to prepare a full and comprehensive index to each volume of said decisions. When said decisions are prepared in accordance with the foregoing instructions, the Clerk of the Supreme Court shall transfer them to the Superintendent of State Printing, who shall submit the proof thereof to the supreme court for correction and approval. After being duly corrected, the Superintendent of State Printing shall cause to be printed, in the Nevada State Printing Office, six hundred copies of said decisions and transfer the same to the Secretary of State, to be by him distributed as hereinafter provided.

Extra Copies.

2601. SEC. 3. To provide against an insufficiency in the number of said reports, the Superintendent of State Printing shall cause to be printed three hundred extra copies of each form thereof, and store the same away, unbound, subject to the order of the Secretary of State.

Title, etc.

2602. SEC. 4. The title of each volume shall be "Nevada Reports," which title, together with the name of the reporter and the number of the volume, shall be printed on the back of each book.

Compensation to Clerk—May Employ Attorney.

2603. SEC. 5. Said Clerk of the Supreme Court shall receive for his compensation as reporter of said decisions the sum of six hundred dollars per year, payable out of the same fund and in the same manner that the salaries of the other state officers are paid; and he may, in his discretion, employ a competent attorney to assist him in the preparation of said decisions, who shall be allowed a reasonable compensation for his services, not to exceed the sum of seven hundred dollars for each volume.

Howell v. LaGrave, 23 Nev. 373.

To Distribute Copies—Price.

2604. SEC. 6. On the receipt of each volume of said report from the Superintendent of State Printing, the Secretary of State shall distribute them in the following manner: To each state and territory, one copy; to each of the heads of departments at Washington, one copy; to the Library of Congress, two copies; to each of the Judges of the United States Circuit and District Courts in the States of Nevada, California, and Oregon, one copy; to the Nevada State Library, two copies; to each state officer, Justice of the Supreme Court, Clerk of the Supreme Court, District Judge, District Attorney, County Clerk, and Justice of the Peace in this state, one copy; and to each public library and literary association within this state, one copy. He shall distribute to such literary and scientific institutions, publishers, and authors as in his opinion may secure an interchange of works, which may properly be placed in the state library. The remaining copies shall be held for sale at the price of two dollars per volume; *provided*, that a sufficient number be kept in the office of the Secretary of State for the use of the legislature when in session.

Reports Turned Over to Successors.

2605. SEC. 7. All reports distributed to state, district, and other officers in this state, shall be for the use of the officer, and shall be by the person receiving the same turned over to his successor in office, and the Secretary of State shall take proper receipts for the same.

An Act to provide for the republication and stereotyping of certain volumes of the reports of the decisions of the supreme court.

Approved March 2, 1877, 112.

By Whom and in What Manner Published.

2606. SECTION 1. There shall be published by the publishers of the current volumes of Nevada Supreme Court Reports, from time to time, under the direction and by the approval of the supreme court, all volumes of the reports of the decisions of said court which shall be out of print, or so nearly so as to make the republication thereof, in the opinion of the court, advisable; and such republication shall be edited by such person, learned in the law, as shall be selected or approved by said court, and in such manner, and with such reduction of the number of volumes as said court shall, by its order, direct; the entire cost of such editing to be paid by the publishers, and the numbers and pages of the present volumes to be preserved in such new edition; and the plates of all such volumes of reports as shall be republished under this Act shall be stereotyped, and four hundred copies of each volume thereof, the same to be of the same style and quality as to paper and binding as volume ten of Nevada Reports, and to contain seven hundred and fifty pages or more, as the supreme court may determine, shall be delivered to the Secretary of State. And upon furnishing to the Secretary of State such copies, and satisfactory proof of having stereotyped the plates of such volumes, the said publishers shall receive from the state the price of two dollars and fifty cents (\$2 50) per copy for each volume of Nevada Reports so republished and furnished to the state, to be audited by the State Board of Examiners, and paid by the State Treasurer, on the warrant of the State Controller, out of

any money not otherwise appropriated; *provided*, that when two volumes of said reports shall be printed and bound in one volume, by direction of the supreme court, the price to be paid by the state shall be five dollars (\$5) per copy; *and, provided further*, that the said publishers shall enter into a contract, to be approved by the Justices of the Supreme Court, and filed in the office of the Secretary of State, stipulating that they will faithfully perform all the acts and conditions in this Act required to be performed by them, and particularly will, at all times, keep for sale, and sell to the State of Nevada, and to the residents of the state, copies of the volumes to be so republished, at the rate herein fixed; and said publishers shall give bond, for the fulfillment of said contract, in the sum of ten thousand dollars, which bond shall be filed with the Secretary of State and approved by the Justices of the Supreme Court, or a majority thereof.

Price Per Volume.

2607. SEC. 2. The said publishers shall sell said volumes at a price not exceeding two dollars and fifty cents (\$2 50) per volume for each and every volume of Nevada Reports so republished, to all residents of this state, and no greater price shall be demanded or received by them, or their agents, or assigns, or either of them.

Volumes Retained.

2608. SEC. 3. The Secretary of State is hereby authorized to sell any copies of the volumes to be so republished, which the state may now have on hand exceeding fifty copies of each volume, which he shall retain for the use of the state, at the rate of two dollars and fifty cents (\$2 50) per volume.

Who Entitled to Receive Reports.

2609. SEC. 4. It shall be the duty of the Secretary of State, upon the republication of these reports as herein provided, to ascertain to whom the early reports have been supplied, as per Act of February twentieth, eighteen hundred and seventy-five, and supply, when he finds deficiencies, the following parties with all the reports of the Supreme Court of Nevada: To each state and territory, one copy; to each of the heads of departments at Washington, one copy; to the Library of Congress and the Nevada State Library, two copies; to each of the United States Circuit and District Courts in the States of Nevada, California and Oregon, one copy; to each state officer, Justice of the Supreme Court, Clerk of the Supreme Court, District Judge, District Attorney, County Clerk, and Justice of the Peace in this state, one copy; and to each public library and literary association within this state, one copy. He shall, also, from time to time, distribute said reports to such literary and scientific institutions, publishers, and authors as, in his opinion, may secure an interchange of works which may be properly placed in the state library. The remaining copies shall be kept in the office of the Secretary of State for the use of the legislature when in session; *provided*, that no distribution shall be made to any party or parties outside of the state when there may be less than one hundred copies of any given volume on hand.

Reports Turned Over to Successor.

2610. SEC. 5. All reports distributed to state, district, and other officers in this state, shall be for the use of the office, and shall be, by the person receiving the same, turned over to his successor in office; and the Secretary of State shall take proper receipts for such reports.

Points and Authorities.

2611. SEC. 6. All volumes of reports republished under this Act, except volumes one and two, shall contain a brief citation of the points made and authorities cited by the attorneys.

An Act relative to attorneys and counselors-at-law.

Approved October 31, 1861, 6.

How Known.

2612. SECTION 1. All persons admitted to practice in any of the courts of this territory, shall be known as attorneys and counselors-at-law.

Who Admitted to Practice.

2613. SEC. 2. Any citizen of this state of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, shall be entitled to admission as attorney and counselor in all the courts of this state. Under this Act females shall have the same rights and privileges as males. *As amended, Stats. 1893, 12; 1899, 30.*

Admission of Attorneys—Examining Committee—Oath and Fee.

2614. SEC. 3. Every applicant for admission as attorney and counselor-at-law shall produce satisfactory testimonials of good moral character, and undergo such examination, as to his qualification, as the supreme court may direct; *provided*, that such examinations and testimonials may be dispensed with at the discretion of said court; and it is hereby made the duty of the supreme court, upon application of the District Judge of any judicial district within this state, to appoint a committee to examine persons applying for admission as attorneys and counselors-at-law, under such rules and regulations as the supreme court may prescribe, which committee shall consist of the District Judge of the district, and at least two attorneys-at-law of the district in which the committee is appointed. And it shall be the duty of the committee so appointed to examine persons applying for admission to practice law, and report to said supreme court the result of such examination, with recommendation that the person or persons so examined be or be not admitted to practice law. Upon the filing and approval by said supreme court of the report of any committee so appointed, the supreme court may order the Clerk of said supreme court to issue to the person or persons so recommended a license, authorizing such person or persons to practice as attorneys and counselors-at-law in all the state courts within this state; but no license shall be issued, under the provisions of this Act, until the person to whom the same may issue shall have filed with the Clerk of the Supreme Court his official oath, and paid over to the State Treasurer the sum of twenty-five dollars, as now provided by law. *As amended, Stats. 1871, 148; 1875, 142.*

Additional fees for admission of attorney, see Secs. 1530 and 2469.

How Licensed.

2615. SEC. 4. If he be duly qualified, the court shall admit him as attorney and counselor in all the courts of the state, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the Clerk of the court, which certificate shall be his license. *As amended, Stats. 1871, 148.*

Entered on Roll.

2616. SEC. 5. Any district court of this state may order to be entered upon its roll of attorneys the name of any person who shall produce a license given to him by the Clerk of the Supreme Court, as in this Act provided. *As amended, Stats. 1871, 148.*

Oath and License.

2617. SEC. 6. Every person, before receiving a license to practice law, shall take, before some officer authorized by the laws of this state to administer oaths, the oath prescribed by law, and after procuring the State Controller's order on the State Treasurer, to receive the same, pay over to the said State Treasurer the sum of twenty-five dollars, for the use of the state library fund; and the Clerk of the court shall require of the person so admitted the clearance of the State Controller, certifying the payment of said twenty-five dollars into the state treasury,

before issuing such license, and in no case shall the license be issued until such clearance is filed in the office of the Clerk. *As amended, Stats. 1871, 148; 1873, 114.*

Examination Dispensed With.

2618. SEC. 7. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor in the highest courts of a sister state or territory; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission.

Roll Kept.

2619. SEC. 8. Each Clerk shall keep a roll of attorneys and counselors of the court of which he is Clerk, which shall be a record of the court.

Practicing Without License.

2620. SEC. 9. If any person shall practice law in any court in this state, except a justice's, recorder's or municipal court, without having received a license as attorney and counselor, after admission by the supreme court, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt, and shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined one hundred dollars or imprisoned in the county jail fifty days. *As amended, Stats. 1871, 148.*

Authority of Attorney.

2621. SEC. 10. An attorney and counselor shall have authority: First—To bind his client in any of the steps of an action or proceeding, by his agreement filed with the Clerk, or entered upon the minutes of the court, and not otherwise. Second—To receive money claimed by his client in an action or proceeding during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

Change of Attorney.

2622. SEC. 11. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows: First—Upon his own consent, filed with the Clerk or entered upon the minutes. Second—Upon the order of the court or Judge thereof on the application of the client.

Huffaker v. Crosby, 24 Nev. 115

Notice of Change.

2623. SEC. 12. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

Hoppin v. Bank, 24 Nev. 252w. 84

Death or Removal.

2624. SEC. 13. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, before any further proceedings be had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

Suspension of Attorney.

2625. SEC. 14. An attorney and counselor may be removed or suspended by the supreme court, and by no other court in the territory, for either of the following causes arising after his admission to practice: First—Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second—For willful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession. Third—For misconduct in office, or for good cause shown.

ATTORNEY-AT-LAW—MOTION TO STRIKE NAME FROM ROLL—COURT OF RECORD. *Held*, that the statute authorizing the court to remove an attorney who has been convicted of a felony or misdemeanor, and that "the record of his conviction shall be conclusive evidence," contemplates a conviction in a court of record; that the docket of a Justice of the Peace is not conclusive. In the Matter of Granger, 15 Nev. 56.

Conviction of Attorney.

2626. SEC. 15. In the case of the conviction of an attorney or counselor of a felony or misdemeanor involving moral turpitude, the Clerk of the court in which the conviction was had shall, within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

Proceedings to Remove.

2627. SEC. 16. The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section fourteenth, shall be taken by the court on the receipt of the certified copy of the record of convictions; the proceedings under the second and third subdivisions of section fourteenth may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

Accusation to Be in Writing.

2628. SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

Accusation, What to State.

2629. SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

To Appear and Answer.

2630. SEC. 19. After receiving the accusation, the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused within a prescribed time before the day appointed in the order.

Appearance of Accused.

2631. SEC. 20. The accused must appear at the time appointed in the order and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

Fleadings.

2632. SEC. 21. The accused may answer the accusation, either by objecting to the sufficiency, or by denying its truth.

Demurrer.

2633. SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

Answer.

2634. SEC. 23. If an objection to the sufficiency of the accusation be not sustained, the accused shall answer forthwith.

Plea of Guilty.

2635. SEC. 24. If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he deny the matter charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

Reference to Committee.

2636. SEC. 25. The court may, in its discretion, order a reference to a committee to take the depositions in the matter, and to report to the court before proceeding to try the accusation.

Judgment on Conviction.

2637. SEC. 26. Upon conviction, in cases arising under the first subdivision of section fourteenth, the judgment of the court shall be, that the name of the party be stricken from the roll of attorneys and counselors of the court, and he be precluded from practicing as such attorney or counselor in all the courts of this territory; and, upon conviction in cases under the second and third subdivisions of section fourteenth, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right of practice as attorneys or counselors in the courts of this territory, permanently or for a limited period.

May Appear in Own Behalf.

2638. SEC. 27. Nothing in this Act shall be so construed as to prevent any person from appearing in his own behalf in any court in this territory.

REAL PROPERTY AND CONVEYANCES.

An Act concerning conveyances.

Approved November 5, 1861, 11.

Conveyance by Deed.

2639. SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as hereinafter directed.

1. DEED EXECUTED AND DELIVERED. Carries absolute title. *Ruhling v. Hackett*, 1 Nev. 360. COURTS OF EQUITY may correct mistakes. *Id.*
2. QUITCLAIM DEED—CONVEYS TITLE, WHEN—PAROL EVIDENCE ADMISSIBLE TO IDENTIFY PROPERTY. *Brown v. Warren*, 16 Nev. 228.
3. QUITCLAIM DEED. Conveys whatever present interest the grantor has in property, and, although intended as a mortgage, will protect the rights of an innocent purchaser for value. *Brophy M. Co. v. B. & D. G. & S. M. Co.*, 15 Nev. 101.
4. QUITCLAIM DEED—AFFECTS ONLY PRESENT RIGHT. Title of patentee of public land unaffected by his previous quitclaim deed. *Harden v. Cullins*, 8 Nev. 49.
5. SUFFICIENCY OF SHERIFF'S DEED—ACKNOWLEDGMENT OF SHERIFF'S DEED. *Smith v. Claimants*, 4 Nev. 254.
6. DEED ABSOLUTE ON ITS FACE MAY BE SHOWN TO BE A MORTGAGE—PAROL EVIDENCE ADMISSIBLE—PROOF SHOULD BE CLEAR. *Bingham v. Thompson*, 4 Nev. 224; *Saunders v. Stewart*, 7 Nev. 200; *Pierce v. Traver*, 13 Nev. 526.
7. ABSOLUTE DEED, WHEN A MORTGAGE. *First Nat. Bank v. Kreig*, 21 Nev. 404.
8. GRANTING CLAUSE—HOW CONSTRUED. *McCurdy v. Alpha M. Co.*, 3 Nev. 27.
9. CONSTRUCTION OF DEED—SUFFICIENCY OF DESCRIPTION. *Paroni v. Ellison*, 14 Nev. 60.
10. CONSTRUCTION OF DEED—EASEMENT—ESTOPPEL. *Lindsay v. Jones*, 21 Nev. 72.
11. DEED MADE PRIOR TO STATUTE OF CONVEYANCES. *Sharon v. Davidson*, 4 Nev. 416.
12. CONSTRUCTION OF DEED—WATER DITCH. *Fogus v. Ward*, 10 Nev. 269.
13. DESCRIPTION—INTENTION OF GRANTOR TO CONVEY LAND—PRESUMPTIONS—EVIDENCE OF EXISTENCE OF DEEDS. *Langworthy v. Coleman*, 18 Nev. 440.
14. EQUITY—EFFECT OF RECONVEYANCE OF TITLE. S. held a deed of mining ground as a mortgage to secure an existing indebtedness; he conveyed the premises to P., and after two or more transfers of the title, the property was redeeded to S.: *Held*, that when the title returned to S., the same equities attached to it in his hands as existed at the time he made the conveyance to P. *Brophy M. Co. v. B. & D. G. & S. M. Co.*, 15 Nev. 101.

15. **LEGAL TITLE—DEED OF LAND TO T. B. & BRO.** A conveyance of land to Thomas Barnett & Bro. vests the legal title in Thomas Barnett alone, and a conveyance from him will give to his grantees a good and valid title. *Barnett v. Lachman*, 12 Nev. 361.
16. **PRESUMPTION OF CLAIM TO ENTIRE TRACT BY ENTRY UNDER DEED.** A person entering upon a tract of land under a deed with definite boundaries, is presumed by the mere act of entry so made to intend to claim the entire tract. *Sharon v. Minnock*, 6 Nev. 377.

By Married Women.

2640. SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

Acknowledgment.

2641. SEC. 3. Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

Acknowledgments, by Whom Made.

2642. SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers: First—If acknowledged or proved within this state, by some Judge or Clerk of a court having a seal, or some Notary Public or Justice of the Peace; *provided*, when the acknowledgment is taken before a Justice of the Peace in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the Clerk of the district court of such county, as to the official character of the Justice taking the proof or acknowledgment, and the authenticity of his signature. Second—If acknowledged or proved without this state, and within the United States, by some Judge or Clerk of any court of the United States, or of any state or territory having a seal, or by any Commissioner appointed by the government of this state for that purpose, or by a Justice of the Peace of any county in any state or territory in the United States, accompanied with the certificate of the Clerk of a court of record of the county having a seal, as to the official character of the Justice and the authenticity of his signature. Third—If acknowledged or proved without the United States, by some Judge or Clerk of any court of any state, kingdom, or empire having a seal, or by any Notary Public therein, or by any Minister, Commissioner, or Consul of the United States appointed to reside therein.

See, also, Sec. 2728.

ACKNOWLEDGMENT OF DEED—ABOVE SECTION CONSTRUED. Deed acknowledged in foreign country before Vice-Consul-General of the United States good. *Evans v. Lee*, 11 Nev. 194.

Record Valid.

2643. (SEC. 2.) All acknowledgments or proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged, or proven, and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like force and effect as if proven before the officer, and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right required by operation of law prior to the passage of this Act. *As amended, Stats. 1867, 103.*

Certificate Annexed.

2644. SEC. 5. Every officer shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance; such certificate shall be: First—When granted by any Judge or Clerk, under the hand of such Judge or Clerk, and the seal of the court. Second—When granted by an officer who has a seal of office, under the hand and official seal of such officer.

Proof of Identity.

2645. SEC. 6. No acknowledgment of any conveyance whereby any real

estate is conveyed, or may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known, to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Certificate, What to State.

2646. SEC. 7. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known, to the officer granting the certificate, to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

Form of Acknowledgment.

2647. SEC. 8. Such certificate shall be substantially in the following form, to wit:

State of Nevada, County of----- On this-----day of-----, A. D.-----, personally appeared before me, a Notary Public (or Judge, or other officer, as the case may be), in and for said county, A. B., known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned; *provided*, that in all cases where acknowledgments have been made, or may hereafter be made, by non-residents of this state, conveying the title to real property situated in this state, and such certificate of acknowledgment is executed in accordance with the laws of the state or territory where such grantor resides, every such certificate shall have the same force and effect, and such conveyance shall be of equal validity as though such certificate contained the form and language prescribed in this section. *As amended, Stats. 1893, 75.*

1. ACKNOWLEDGMENT, FORM OF. The law does not require that the exact form of the certificate given in the statute shall be followed. A substantial compliance therewith is sufficient. *Johnson v. Badger M. & M. Co., 13 Nev. 351.*

2. CERTIFICATE OF ACKNOWLEDGMENT—TESTIMONY OF NOTARY. *Musgrove v. Waitz, 14 Nev. 78.*

When Grantor is Unknown.

2648. SEC. 9. When the grantor is unknown to the court or officer taking the acknowledgment, the certificate shall be in the following form, to wit: "Territory of Nevada, County of----- On this-----day of-----, A. D.-----, personally appeared before me, a Notary Public (or Judge, or officer, as the case may be), in and for the said county, A. B., satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned."

Proof of Execution of Conveyance.

2649. SEC. 10. The proof of the execution of any conveyance, whereby any real estate is conveyed, or may be affected, shall be: First—By the testimony of a subscribing witness; or, Second—When all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of, at least, one subscribing witness, given by a credible witness to each signature.

Witness Personally Known.

2650. SEC. 11. No proof by a subscribing witness shall be taken unless such witness shall be personally known, to the officer taking the proof, to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

Proof Necessary.

2651. SEC. 12. No certificate of such proof shall be granted unless such subscribing witnesses shall prove the person, whose name is subscribed thereto as a

party, is the person described in, and who executed, the same; that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

What to Set Forth.

2652. SEC. 13. The certificate of such proof shall set forth the following matters: First—The fact that such subscribing witness was personally known, to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second—The proof given by such witness of the execution of such conveyance, and of the fact that the person, whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Evidence of Handwriting.

2653. SEC. 14. No proof by evidence of the handwriting of the party, and of a subscribing witness, shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

When Certificate Granted.

2654. SEC. 15. No certificate of any such proof shall be granted unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall, in like manner, state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

Witnesses.

2655. SEC. 16. Upon the application of any grantee in any conveyance required by this Act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer, and testify touching the execution thereof.

Penalty.

2656. SEC. 17. Every person who, being served with a subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the Judge of some court of record, there to remain without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have been first tendered to him.

To Be Recorded.

2657. SEC. 18. A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this Act, signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the Recorder of any county in this territory.

Conveyance by Married Women.

2658. SEC. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and her husband, and certified, in the manner hereinafter provided, by the proper officer taking the acknowledgment.

Covenants Binding.

2659. SEC. 20. No covenant, expressed or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs all her rights and interest expressed to be conveyed in such conveyance.

Acknowledgments of Married Women.

2660. SEC. 21. Any officer authorized by this Act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed, or may be affected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

Married Woman Examined Apart from Husband.

2661. SEC. 22. No such acknowledgment shall be taken, unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such a credible witness; nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her said husband, and that she does not wish to retract the execution of the same.

Form of Certificate.

2662. SEC. 23. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this Act shall be valid.

All Conveyances Recorded.

2663. SEC. 24. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged, and certified in the manner prescribed in this Act, to operate as notice to third persons, shall be recorded in the office of the Recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Record to Be Notice.

2664. SEC. 25. Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this Act, shall, from the time of filing the same with the Recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

1. CONSTRUCTIVE NOTICE BY RECORD ENTIRELY STATUTORY. The matter of constructive notice by the record of conveyance is entirely a creature of statute; and its effect is to be gathered from construction of the statute. *Grellet v. Heilshorn*, 4 Nev. 526.

RECORD OF DEEDS INTENDED FOR MORTGAGES AS NOTICE. Id.

RECORD OF CONVEYANCE IN GENERAL AS NOTICE. Id.

LIENS OF DEEDS INTENDED AS MORTGAGES. Id.

2. **RECORDING OF SEAL NOT NECESSARY—WHEN ENSEALING WILL BE PRESUMED.** *Flowery M. Co. v. N. B. M. Co.*, 16 Nev. 302.
3. **PURPOSE OF RECORDING MORTGAGES.** *Virgin v. Brubaker*, 4 Nev. 31.
4. **DEED—MORTGAGE—BONA FIDE PURCHASER.** Where a deed intended as a mortgage is recorded, and no defeasance appears of record, a bona fide purchaser from the grantee acquires an absolute title, free from the equity of redemption of the mortgagor. *Gruber v. Baker*, 20 Nev. 453.
5. **ACTUAL NOTICE—PURCHASER IN GOOD FAITH.** Actual notice dispenses with constructive notice. A purchaser with actual notice is not a purchaser in good faith of the estate previously conveyed. *Gilson v. Boston*, 11 Nev. 413.
6. **POSSESSION—NOT NOTICE OF UNRECORDED DEFEASANCE.** *Brophy M. Co. v. B. & D. G. & S. M. Co.*, 15 Nev. 101; *Fair v. Howard*, 6 Nev. 304.
7. **NOTICE SUFFICIENT TO PUT PARTY ON INQUIRY—ORDINARY DILIGENCE.** Information which makes it the duty of a party to make inquiry, and shows where it may be made, is notice of all facts to which such inquiry would naturally lead. *Burbank v. Rivers*, 20 Nev. 159.
8. **NOTICE PRESUMED—LACK OF DILIGENCE.** *Crosier v. McLaughlin*, 1 Nev. 348.

Void When Not Recorded.

2665. SEC. 26. Every conveyance of real estate within this territory, hereafter made, which shall not be recorded as provided in this Act, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Powers of Attorney.

2666. SEC. 27. Every power of attorney, or other instrument in writing, containing the power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any conveyance whereby any real estate is conveyed, or may be affected, shall be acknowledged, or proved and certified, and recorded as other conveyances whereby real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

Revocation of Power.

2667. SEC. 28. No such power of attorney or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

THE DEPOSIT FOR RECORD OF A REVOCATION OF A POWER OF ATTORNEY in the proper office operates under our statute as a notice to all parties dealing with the attorney. By such deposit, the revocation becomes absolute without actual notice to the attorney. *Arnold v. Stevenson*, 2 Nev. 234.

Evidence of Conveyance.

2668. SEC. 29. Every conveyance, or other instrument, conveying or affecting real estate, which shall be acknowledged, or proved and certified, as herein-after prescribed, may, together with the certificate of acknowledgment, or proof, be read in evidence without further proof.

Evidence of, When Lost.

2669. SEC. 30. When any such conveyance, or instrument, is acknowledged or proved, certified and recorded, in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance, or instrument, is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the Recorder, under the seal of his office, may be read in evidence without further proof.

Evidence May Be Rebutted.

2670. SEC. 31. Neither the certificate of the acknowledgment nor of the

proof of any such conveyance, or instrument, nor the record, nor the transcript of the record, of such conveyance, or instrument, shall be conclusive, but the same may be rebutted.

Proof by Other Evidence.

2671. SEC. 32. If the party contesting the proof of any such conveyance, or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance, or instrument, nor the record thereof, shall be received in evidence, until established by other competent proof.

Subsequent Title.

2672. SEC. 33. If any person shall convey any real estate, by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterward acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

Adverse Title.

2673. SEC. 34. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

Mortgages and Liens, How Discharged.

2674. SEC. 35. Any mortgage or lien that has been or may hereafter be recorded, may be discharged or assigned by an entry on the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of or value received for the mortgage or lien, and the debt secured thereby in the presence of the Recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release or assignment duly acknowledged and recorded. *As amended, Stats. 1881, 23.*

MORTGAGE MARKED SATISFIED BY FRAUD OR MISTAKE STILL HOLDS. *Gibson v. Milne*, 1 Nev. 528.

Discharge.

2675. SEC. 36. Any mortgage shall also be discharged upon the record thereof by the Recorder, in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or approved and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Discharge to Be Recorded.

2676. SEC. 37. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage, made by the Recorder upon the record thereof.

Penalty for Failure to Discharge.

2677. SEC. 38. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Conveyances Heretofore Made.

2678. SEC. 39. All conveyances of real estate heretofore made and acknowledged, or proved according to the laws in force at the time of such making and

acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with like effect, as conveyances executed and acknowledged in pursuance of this Act.

Legality Not Affected.

2679. SEC. 40. The legality of the execution, acknowledgment, proof, form or record of any conveyance, or other instrument, heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this Act, but shall depend for its validity or legality upon the laws and customs then in existence and in force in the mining and agricultural districts.

Tenancy in Common.

2680. SEC. 41. Every interest in real estate granted or devised to two or more persons, other than executors and trustees, as such, shall be a tenancy in common, unless expressly declared in the grant or devise to be a joint tenancy.

Inheritance.

2681. SEC. 42. The term heirs, or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

Heirs or Issue and Remainders.

2682. SEC. 43. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his or her body, or without issue, the word "heir," or "issue," shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Posthumous Child.

2683. SEC. 44. A future estate, depending on the contingency of the death of any persons without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent.

Estate Tail, Posthumous Child.

2684. SEC. 45. Where an estate shall be by any conveyance limited, in remainder, to the son or daughter or issue, or to use of the son or daughter or issue of any person to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion, and in the same manner, as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

Attornments Not Necessary.

2685. SEC. 46. Grants of rents, or of reversions, or remainders, shall be good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby.

Attornment, When Void.

2686. SEC. 47. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction.

Warrantees Abolished.

2687. SEC. 48. Lineal and collateral warrantees, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

Import of "Grant, Bargain and Sell."

2688. SEC. 49. The words "grant, bargain, and sell," in all conveyances hereafter to be made, in and by which any estate of inheritance or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself and his heirs to the grantee, his heirs, and assigns: First—That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein to any person other than the grantee. Second—That such real estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Fraudulent Conveyances, When Void.

2689. SEC. 50. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created, with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents, or profits, as against such purchasers, shall be void.

When Fraudulent.

2690. SEC. 51. No such conveyance, or charge, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Power of Revocation at Will.

2691. SEC. 52. Every conveyance or charge of or upon any estate, or interest in lands, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from said grantor for a valuable consideration, of any estate, or interest, so liable to be revoked, or determined, although the same be not directly revoked, determined, or altered by such grantor, by virtue of the power reserved, or expressed in such prior conveyance or charge.

Revocation and Reconveyance.

2692. SEC. 53. Where a power to revoke a conveyance of lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Same.

2693. SEC. 54. If a conveyance to a purchaser, under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall, nevertheless, be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

Statute of Frauds—Lease for One Year.

2694. SEC. 55. No estate, or interest in lands, other than for leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, sur-

rendering, or declaring the same, or by his lawful agent thereunto authorized in writing.

1. LEASE FOR A YEAR, nor the power to execute it, need not be in writing. *Gilson v. Boston*, 11 Nev. 413.
2. DECLARATION OF TRUST AS TO LAND MUST BE IN WRITING—DECLARATION OF TRUST MAY BE MADE AT ANY TIME—AS EVIDENCE—EQUITIES OF CESTUI QUE TRUST. *Sime v. Howard*, 4 Nev. 473.
3. EXPRESS TRUST CANNOT BE CREATED BY PAROL. *White v. Sheldon*, 4 Nev. 230.
IMPLIED TRUST may be proved by parol. *Id.*
4. RESULTING TRUST, HOW CREATED AND PROVED. *Frederick v. Haas*, 5 Nev. 389.
5. MINING PARTNERSHIP—STATUTE OF FRAUDS—PARTNERSHIP CAPITAL. Unless partnership capital is employed in the acquisition of a mining claim, the partnership agreement, unless in writing, is within the statute of frauds. Equitable relief may be given against the partner holding the legal title when the property has been acquired by partnership property upon the theory that a resulting trust exists—a trust arising by operation of law and, therefore, within the exception of the statute. *Craw v. Wilson*, 22 Nev. 385.
6. CONSTRUCTIVE TRUST—PAROL EVIDENCE ADMISSIBLE—STATUTE OF FRAUDS. *Bowler v. Curier*, 21 Nev. 158.
7. A LEGAL INTEREST IN LAND can only be conveyed in this state by means of a deed of conveyance in writing. The right to the enjoyment and repair of a dam, and to have the water so diverted flow through certain land, is such an interest in land as can only be conveyed by deed in writing. *Lobdell v. Hall*, 3 Nev. 507.
8. PAROL LICENSE, WHEN IRREVOCABLE. A parol license to erect a dam upon another's land for the purpose of running a flouring-mill, is irrevocable after the party to whom the license is given has executed it by erecting the mill, or otherwise expending money upon the faith of the license. *Lee v. McLeod*, 12 Nev. 280.

STATUTE OF FRAUDS. The expenditure of money in consequence of the license, has the effect of turning such license into an agreement that will be enforced in equity. The execution of the parol license supplies the place of a writing, and takes the case out of the statute of frauds. *Id.*

Not to Apply to Wills.

2695. SEC. 56. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate, by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law.

Contracts in Writing.

2696. SEC. 57. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Agent to Subscribe.

2697. SEC. 58. Every instrument required to be subscribed by any person under the last preceding section may be subscribed by the agent of such party lawfully authorized.

Specific Performance.

2698. SEC. 59. Nothing contained in this Act shall be construed to abridge the powers of courts to compel the specific performance of agreements in cases of part performance of such agreements.

1. PAROL AGREEMENT—PART PERFORMANCE. Nothing is to be considered as a part performance which does not put the party into a situation which is a fraud upon him, unless the agreement is fully performed. *Evans v. Lee*, 12 Nev. 393.

IDEM. To entitle a party to take the case out of the statute of frauds, upon the ground of part performance of a parol contract, it is essential that the terms of the contract should be clearly and definitely established. *Id.*

IDEM. Before the contract can be enforced it must be shown that the party seeking its enforcement has performed, or offered to perform, or been ready and willing to perform, all the essentials of the agreement on his part. *Id.*

2. **CONTRACT VOID BY STATUTE OF FRAUDS—QUANTUM MERUIT.** Recovery on *quantum meruit* may be had for labor and services performed under a contract void by the statute of frauds. *Lapham v. Osborne*, 20 Nev. 168.

Trusts, When Void.

2699. **SEC. 60.** All deeds of gift, conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Agreements Not in Writing, When Void.

2700. **SEC. 61.** In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith: First, every agreement that, by the terms, is not to be performed within one year from the making thereof; second, every special promise to answer for the debt, default, or miscarriage of another; third, every promise or undertaking made upon consideration of marriage, except mutual promises to marry.

1. **THE INTENT OF THE STATUTE OF FRAUDS SEEMS TO BE THAT THE WRITING ITSELF, WITHOUT EXTRANEOUS EVIDENCE, SHOULD SHOW THE CONSIDERATION FOR THE GUARANTY.** *Van Doren v. Tjader*, 1 Nev. 380.

The promise to answer for the debt of another, and the consideration for that promise, need not be contained in the same paper, provided the signature of the guarantor can be connected with both. *Id.*

2. **CONTRACT VOID UNDER STATUTE OF FRAUDS.** Where the condition precedent of a contract is the delivery and reception of chattels to be kept for two years, and there is no written agreement, the contract is void under the statute of frauds. *Buckley v. Buckley*, 9 Nev. 373.

3. **AGREEMENT NOT IN WRITING.** Where the purchaser of real property agrees with the vendor to pay certain incumbrances upon it, as a part of the consideration of the conveyance, the person holding such incumbrance, or the person to whom such payment is to be made, may maintain an action upon such promise or agreement. *Ruhling v. Hackett*, 1 Nev. 360.

Such an understanding or promise does not come within the statute of frauds, and need not be in writing. *Id.*

4. **EXECUTED CONTRACT.** When a contract is fully executed on both sides the rights of the parties become fixed, and neither party can interfere with such rights by pleading the statute of frauds. *Cartan v. David*, 18 Nev. 310.

5. **NOT ANSWERING FOR DEBT OR DEFAULT.** Where the vendee of goods, in consideration of the sale, undertakes to pay certain debts to the creditors of the vendor, this is not undertaking to answer for the debt or default of another, but only to pay his own debt in a particular manner. *Alcalde v. Morales*, 3 Nev. 132.

6. **UNDERTAKING—NOT "SPECIAL PROMISE"** to answer for debt, default or miscarriage of another. Consideration of, need not be expressed. *Lightle v. Berning*, 15 Nev. 389.

7. **ORAL UNDERTAKING, WHEN NOT WITHIN THE STATUTE OF FRAUDS.** *Wills v. Bank of Nevada*, 23 Nev. 59.

8. **STATUTE OF FRAUD—PROMISE TO PAY DEBT OF ANOTHER, WHEN VOID.** *Simpson v. Harris*, 21 Nev. 354.

Sale of Goods—Statute of Frauds.

2701. **SEC. 62.** Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or over, shall be void unless: First, a note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or, second, unless the buyer shall accept or receive part of such goods, or the evidences, or some of them, of such things in

action; or, third, unless the buyer shall, at the time, pay some part of the purchase money.

MANUFACTURE NOT SALE. When A contracts to make a certain number of bricks for B, and deliver them to him at a certain price, this is a contract rather for the manufacture than sale of brick, and does not come within the sixty-second section. *O'Neil v. Silver Peak M. Co.*, 3 Nev. 141.

Auction Sale.

2702. SEC. 63. Whenever goods shall be sold at auction, and the auctioneer shall, at the time of sale, enter in a sale-book a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Sale, When Evidence of Fraud.

2703. SEC. 64. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of things sold or assigned, shall be conclusive evidence of fraud, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith.

1. **SALE—DELIVERY OF ORE.** *Held*, that the title passed to the principal when the ores were delivered to the carrier. *West v. Humphreys*, 21 Nev. 80.

2. **SALE—CHANGE OF POSSESSION—DECLARATION OF VENDOR AFTER SALE.** *Lewis v. Wilcox*, 6 Nev. 215.

3. **SALE OF PERSONAL PROPERTY—ACTUAL AND CONTINUED CHANGE OF POSSESSION—STATUTE OF FRAUDS.** Where personal property is purchased for a fair consideration: *Held*, that in order to take the case out of the operation of the statute of frauds, the vendee must take actual possession of the property, the possession must be open, unequivocal, substantial and continuous, and must not be taken to be surrendered back. *Gay v. Sullivan*, 10 Nev. 416; *Twist v. Kelley*, 11 Nev. 377; *Estey v. Cooke*, 12 Nev. 276.

ACTS OF OWNERSHIP—EMPLOYMENT OF SERVANT OF VENDOR, HOW CONSTRUED. *Id.*

4. **ACTUAL POSSESSION—EMPLOYMENT OF CLERK OF VENDOR.** The mere fact of the reemployment of the clerk of the vendor by the vendees does not render a sale of personal property invalid. *Ivancovich v. Stern*, 14 Nev. 342.

5. **STATUTE OF FRAUDS—STATUS OF CREDITOR TO ATTACK SALE OF GOODS FOR WANT OF DELIVERY—DELIVERY AND CHANGE OF POSSESSION BEFORE ATTACHMENT.** *Clute v. Steele*, 6 Nev. 235.

6. **SALE AND DELIVERY OF PERSONAL PROPERTY—CHARCOAL IN PITS—CHANGE OF POSSESSION. WHAT SUFFICIENT.** *Tognini v. Kyle*, 17 Nev. 209.

7. **WHAT NOT SUFFICIENT.** *Comaita v. Kyle*, 19 Nev. 38.

8. **WANT OF DELIVERY, WHEN CONCLUSIVE EVIDENCE OF FRAUD.** *Lawrence v. Burnham*, 4 Nev. 361.

DELIVERY OF GOODS UNDER STATUTE OF FRAUDS. *Id.*

9. **POSSESSION OF PERSONAL PROPERTY—INCLOSED LAND.** The delivery of the possession of inclosed land, carries with it the possession of the personal property—wood and coal—thereon. *Ferraris v. Kyle*, 19 Nev. 435.

10. **SALE—EVIDENCE OF CONTINUED CHANGE OF POSSESSION—STATUTE OF FRAUDS—PROOF OF SALE.** *Conway v. Edwards*, 6 Nev. 190.

Lease of premises as evidence of sale of goods. *Id.*

11. **DELIVERY OF POSSESSION OF PERSONAL PROPERTY—EITHER ACTUAL OR CONSTRUCTIVE.** Actual delivery, where possible, is contemplated. *Doak v. Brubaker*, 1 Nev. 218.

PROPERTY IN POSSESSION OF BAILEE is delivered by order or by the delivery of the receipt, or by obtaining the recognition of the bailee, but when the property is in the possession of an agent or servant, a different rule prevails. *Id.*

12. "IMMEDIATE DELIVERY" WITHIN THE STATUTE, WHAT CONSTITUTES. *Carpenter v. Clark*, 2 Nev. 243.

CONTINUED CHANGE OF POSSESSION. *Id.*

13. CHANGE OF POSSESSION, WHAT CONSTITUTES. *Sharon v. Shaw*, 2 Nev. 289.

Creditor Defined.

2704. SEC. 65. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

Possession of Mortgaged Property—Authorized to Sell—Lien—Chattel Mortgages Recorded.

2705. SEC. 66. No mortgage of personal property shall be valid for any purpose against any other person than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee, or, unless the mortgage shall be recorded in the office of the County Recorder of the county where the property is situated, and also in the county where the mortgagor resides. A mortgage upon personal property, including growing crops, executed, acknowledged and recorded, shall be valid against all third parties without such delivery of possession; *provided*, that no such mortgage shall be valid for any purpose as against other than the parties thereto, unless there be appended or annexed thereto the affidavits of the mortgagor and mortgagee, or some person in their behalf, setting forth that the mortgage is made in good faith, and given for a debt actually owing from the mortgagor, stating the amount and character of such debt, and that the same is not made to hinder, delay or defraud any creditor of the mortgagor. Any personal property, mortgaged as aforesaid, may be seized under attachment or execution, and the surplus, over and above the mortgage debt, secured to any other creditor of the mortgagor by serving upon the mortgagor and mortgagee, or, in his absence from the county, upon his or their agent or other person in charge or possession of such personal property, a copy of the attachment or execution, or, in case no such person can be found in the county in charge or possession thereof, then by filing a copy of the writ of attachment or execution in the office of [the] County Recorder of the county where such property is situate, with a notice endorsed thereon by the officer executing the same, to the effect that such property is so attached. But the possession of mortgaged personal property shall not be taken from the mortgagor or mortgagee unless full payment of the mortgagee's demand be first made, which, if done by the attaching or executing creditor of the mortgagor, shall entitle him to hold such personal property and the possession thereof, under his levy for repayment to him of the amount so paid, in addition to his own individual demand; and any officer executing any execution is hereby authorized to sell such property for the amount of such mortgage demand, in addition to the amount of the execution, and out of the proceeds of sale to first satisfy such mortgage demand. In case of such levy of attachment or execution upon such mortgaged personal property, when the amount of the mortgage demand is not paid to the mortgagee, the officer may expose such property for sale, and may sell the same subject to the rights of the mortgagee under the mortgage, and the purchaser shall take the property subject to such rights and subject to the possession of the parties to the mortgage. The lien of a mortgagee upon a growing crop shall continue until after the crop shall be harvested and threshed or baled, or otherwise prepared for market, and delivered to the mortgagee or his order; *provided*, that a chattel mortgage upon a growing crop may be executed as well before as after the crop is planted, and when executed before the crop is planted, it shall be expressed in the mortgage that it is the intention of the parties that the same shall take effect upon the crops when planted. The several County Recorders of this state are hereby authorized and directed to procure for their respective offices, at the expense of the county, suitable books, properly indexed, for the recording of all chattel mortgages, which books shall be plainly labeled and marked "Records of Chattel Mortgages." All

chattel mortgages shall be recorded therein, and such books shall, at all times, be open to the public for inspection, and the mortgages therein recorded shall be canceled and discharged in the same manner as mortgages on real property are canceled and discharged. The Recorder of the several counties shall receive for recording chattel mortgages, indexing and releasing the same, the same fees as are allowed them for mortgages on real estate; *provided*, that no chattel mortgage shall be given or be valid for a less sum than one hundred dollars. As amended, *Stats. 1869, 55; 1885, 53; 1887, 66.*

1. CHATTEL MORTGAGE—DELIVERY AND POSSESSION OF CORD WOOD—WHEN NOT SUFFICIENT. *Wilson v. Hill, 17 Nev. 401.*
2. CHATTEL MORTGAGE—FAILURE TO RECORD—ACTUAL NOTICE. An unrecorded mortgage, where there is no delivery of the property, is void as to all creditors of the mortgagor, even though they have actual notice of the existence of such mortgage. *Simpson v. Harris, 21 Nev. 353.*
- DELAY IN RECORDING—CREDITOR'S RIGHTS. *Id.*
3. CHATTEL MORTGAGE—AFFIDAVIT TO—NOTICE. *Lutz v. Kinney, 23 Nev. 279.*
4. MORTGAGE VOID PER SE. *Lutz v. Kinney, 24 Nev.*
5. AFFIDAVIT TO CHATTEL MORTGAGE. *Streeter v. Johnson, 23 Nev. 194.*

Bottomry, Respondentia, etc.

2706. SEC. 67. Nothing contained in the last three sections shall be construed to apply to contracts of bottomry, respondentia, or assignments or hypothecations of vessels, or goods at sea, or in foreign states, or without this territory; *provided*, the assignee, or mortgagee, shall take possession of such goods as soon as may be, after the arrival thereof within this territory.

Agent to Subscribe.

2707. SEC. 68. Every instrument required by any of the provisions of this Act to be subscribed by any party, may be subscribed by the lawful agent of such party.

Contracts Void, When.

2708. SEC. 69. Every conveyance, or assignment, in writing, or otherwise, of any estate or interests in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond, or other evidence of debt given, suits commenced, decree, or judgment suffered, with the like intent, as against the persons hindered, delayed or defrauded, shall be void.

1. STATUTE OF FRAUDS—PROMISSORY NOTE—HINDERING, DELAYING AND DEFRAUDING CREDITORS. *McCausland v. Ralston, 12 Nev. 195.*
2. KNOWLEDGE OF FRAUDULENT INTENTION on the part of the vendor must be shown in vendee to avoid the sale. *Gregory v. Frothingham, 1 Nev. 253.*
- SALE WITHOUT RELINQUISHING POSSESSION. *Id.*
3. SALE OF PERSONAL PROPERTY, WHEN VOID—FRAUDULENT INTENT—KNOWLEDGE OF VENDEE. When a sale of personal property is made by the vendor with the intent to hinder, delay and defraud his creditors, and the purchaser has knowledge of such intention, the sale is void. *Greenwell v. Nash, 13 Nev. 286.*
- KNOWLEDGE OF VENDEE, HOW DETERMINED. *Id.*
4. EFFECT OF CONVEYANCE MADE TO DEFRAUD CREDITORS. *Allison v. Hagan, 12 Nev. 38.*
5. SALE OF PERSONAL PROPERTY MADE TO HINDER, DELAY AND DEFRAUD CREDITORS. Fraudulent grantors cannot rely upon their own fraud. *Maher v. Swift, 14 Nev. 324.*
6. SALE, FRAUDULENT, when made to hinder, delay or defraud creditors. *Ivancovich v. Stern, 14 Nev. 342.*

WHEN NOT FRAUDULENT. A debtor has a right to protect his property from being sacrificed, provided he does not do so at the expense of his creditors. Where a sale is made to a party who agrees to immediately pay all the vendor's creditors in full, the transaction is not fraudulent. *Id.*

Grants of Trust, When Void.

2709. SEC. 70. Every grant or assignment, of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the person making the same, or by his agent lawfully authorized, shall be void.

Instruments, When Void.

2710. SEC. 71. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this Act, as against creditors, or purchasers, shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors or purchasers.

Fraud a Question of Fact.

2711. SEC. 72. The question of fraudulent intent, in all cases arising under the provisions of this Act, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Not to Affect Purchaser for Value.

2712. SEC. 73. The provisions of this Act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Lands Defined.

2713. SEC. 74. The term "lands," as used in this Act, shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and shall include in its meaning all possessory right to the soil for mining and other purposes, and the term "estate and interest in lands," shall be construed and embrace every estate and interest, present and future, vested and contingent, in lands as above defined.

Conveyance Defined.

2714. SEC. 75. The term "conveyance," as used in this Act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

Mortgage Recorded.

2715. SEC. 76. A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, all quartz and mining claims, and all such personal property as shall be fixed in its structure to the soil, acknowledged in manner and form as mortgages upon real estate are required by law to be acknowledged and recorded in the office of the Recorder in the county in which the property is situated, shall have the same effect against third persons as mortgages upon real estate.

Mining Rules.

2716. SEC. 77. This Act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the locating, holding, or forfeiture of claims, but, in all cases of mortgages of mining interests under this Act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure; *provided*, that such compensation shall, in no case, exceed the amount realized from the claim by a foreclosure and sale.

Limitation of Leases.

2717. SEC. 78. No lands within this territory shall hereafter be conveyed by lease, or otherwise, except in fee and perpetual succession, for a longer period than ten years; nor shall any town or city lots, or other real property, be so conveyed for a longer time than twenty years. All leases hereafter made, contrary to the provisions of this Act, shall be void.

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An Act supplementary to an Act concerning conveyances.

Approved December 17, 1862, 29.

County Records Impart Notice.

2718. SECTION 1. All instruments of writing now copied into the proper books of record of the office of the County Recorders of the several counties of this territory, shall, after the passage of this Act be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of all deeds, mortgages, powers of attorney, contracts, conveyances, or other instruments, notwithstanding any defect, omission, or informality existing in the execution, acknowledgment, or certificate of recording the same; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired in the hands of subsequent grantees or assignees.

Certified Copies.

2719. SEC. 2. Duly certified copies of such instruments as are embraced in section one of this Act may be read in evidence, under the same circumstances and rules as are now or may hereafter be provided by law for using copies of instruments duly executed and recorded; *provided*, that proof shall be first made that the instruments, copies of which it is proposed to use, were genuine instruments, and were in truth executed by the grantor or grantors therein named.

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An Act to provide for the conveyance of mining claims.

Approved December 12, 1862, 12.

Conveyance of Mining Claim.

2720. SECTION 1. Conveyance of mining claims shall hereafter require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate.

1. THE WORDS "MINING GROUND," when used in a deed, have a technical meaning. They refer to that interest which a mere occupant of the mine has in the same. They are not the words used when a fee simple or leasehold interest in real estate is to be conveyed. *Hale & Norcross G. and S. M. Co. v. Storey Co.*, 1 Nev. 105.
2. SALE OF MINE BY ANOTHER NAME. When a person conveys a lode of ore, we have only to ascertain by the best means in our power what lode he meant; and if we can do so, it makes no difference that he has called it by a name illegitimately acquired by or applied to it. *Phillipotts v. Blasdel*, 8 Nev. 61.

Former Conveyances Construed.

2721. SEC. 2. All conveyances of mining claims heretofore made by bills of sale or other instruments in writing, with or without seals, recorded or unrecorded, shall be construed in accordance with the lawful local rules, regulations, and customs of the miners in the several mining districts of this territory; and if heretofore regarded valid and binding in such districts, shall have the same force and effect between the parties thereto, as prima facie evidence of sale, as if such conveyances had been made by deed under seal.

How Proved.

2722. SEC. 3. The location and transfers of mining claims heretofore made shall be established and proved in contestation before courts, by the local rules, regulations, or customs of the miners in the several mining districts of the territory in which such location and transfers were made.

An Act concerning conveyances of mining locations and claims by minors.

Approved February 27, 1869, 96.

Deed of Minor Held Valid—Suits Pending.

2723. SECTION 1. In all cases in this state, since the first day of July, A. D. eighteen hundred and sixty-seven, where minors over the age of eighteen years have sold interests acquired by them in mining claims or locations by virtue of their having located such claims, or having been located therein by others, and have executed deeds purporting to convey such interests, such deeds, if otherwise sufficient in law, shall be held valid and sufficient to convey such interest fully and completely, notwithstanding the minority of the grantor, and without any power or right of subsequent revocation; *provided*, that this section shall not apply to cases where any fraud was practiced upon such minor, or any undue or improper advantage was taken by his purchaser or any other person to induce such minor to execute such deed; *and, provided further*, that this section shall not apply to or affect any suits which may now be pending in any courts of this state, in which the legality or validity of such deeds may be involved.

Minors Empowered to Sell or Convey.

2724. SEC. 2. All minors in this state, over the age of eighteen years, are hereby authorized and empowered to sell and convey by deed such interests as they may have acquired, or may hereafter acquire, in mining claims or mining locations within this state, by virtue of locating the same, or being located therein, and such deed shall, if otherwise sufficient in law, be held valid and sufficient to convey such interest fully and completely, and without the right of subsequent revocation, notwithstanding the minority of the grantor, subject, however, to the same provisions and limitations contained in the first section of this Act.

An Act to authorize and empower aliens and non-resident persons and incorporations to take, hold, enjoy, and acquire real estate in the State of Nevada.

Approved February 27, 1879, 51.

Persons to Take, Hold and Own Property.

2725. SECTION 1. Any non-resident alien, person, or corporation, except subjects of the Chinese empire, may take, hold, and enjoy any real property, or any interest in lands, tenements, or hereditaments within the State of Nevada, as fully, freely, and upon the same terms and conditions as any resident citizen, person, or domestic corporation.

Rights Granted.

2726. SEC. 2. The right of eminent domain is hereby granted to such non-resident or foreign corporations, upon the same terms and conditions as the same is granted to resident or domestic corporations.

How Construed.

2727. SEC. 3. Nothing herein contained shall be so construed as to confer any other or further rights under the statutes of limitation than those at present existing.

ALIEN—RIGHT TO POSSESSION OF PUBLIC LAND. An alien will be protected in the possession of the public lands, the same as a citizen, against mere naked trespassers who do not connect themselves with the government title. *Courtney v. Turner*, 12 Nev. 345.

An Act concerning conveyances executed without the state.

Approved February 13, 1871, 54.

Acknowledgments Taken Out of the State.

2728. SECTION 1. The proof or acknowledgment of every conveyance affecting any real estate, taken without this state, but within the United States, shall be taken by some one of the following officers: A Judge or Clerk of a court

having a seal, or some Notary Public or Justice of the Peace, or by any Commissioner appointed by the Governor of this state, for that purpose; *provided*, that when the acknowledgment is taken by a Justice of the Peace, the same shall be accompanied with the certificate of the Clerk of a court of record of the county having a seal as to the official character of the Justice and the authenticity of his signature.

See, also, Sec. 2642.

Record Valid.

2729. SEC. 2. All acknowledgments of proofs heretofore taken of the execution of any instrument authorized by law to be recorded, acknowledged or proven and certified, or which may have been certified in the manner hereinabove provided, the record thereof now or hereafter made shall be valid and of like force and effect as if proven before the officer and certified to in the manner heretofore required by law; *provided*, that nothing herein shall affect any right of a bona fide purchaser, or any right acquired by operation of law, prior to the passage of this Act.

An Act to provide for preserving the evidence of the official acts of officers taking acknowledgments, etc.

Approved February 20, 1869, 72.

Officers Required to Keep Record.

2730. SECTION 1. Each officer authorized by law to take the proof or acknowledgment of the execution of conveyances of real estate, or other instrument required by law to be proved or acknowledged, shall keep a record of all his official acts in relation thereto in a book to be provided by him for that purpose, in which shall be entered the date of the proof or acknowledgment thereof, the date of the instrument, the name or character of the instrument proved or acknowledged, and the names of each of the parties thereto, as grantor, grantee, or otherwise. Said record shall, during business hours, be open to public inspection without fee or reward.

Penalty for Refusal or Neglect.

2731. SEC. 2. Any officer aforesaid refusing or neglecting to comply with the requirements of this Act shall be deemed and held guilty of a misdemeanor, and, on conviction thereof, fined before any court of competent jurisdiction in any sum not less than fifty nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section.

An Act for the relief of purchasers at sales of real estate, or any interest therein, by public officers.

Approved December 12, 1862, 13.

Officers' Deeds.

2732. SECTION 1. Where lands, or any estate or interest therein have been or may hereafter be sold by a Sheriff or Constable, or other authorized officer, for taxes, or under an execution or order of sale, and the purchaser or his assigns may be entitled to a deed, and the Sheriff or other officer who made the sale shall have died, or shall be absent from the territory, or in any way disqualified, it shall be lawful for the successor of the said Sheriff or Constable, or other officer to make such deed to such purchaser, his assignee or assignees, in the same manner and with the same effect as if made by the officer making the sale.

Effect of Deed.

2733. SEC. 2. Such deeds, so made as aforesaid, shall have the same force and effect as evidence as if made by the officer making such sale.

An Act to provide for marks instead of signatures.

Approved December 17, 1862, 33.

Marks Instead of Signatures.

2734. SECTION 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

An Act to provide for the omission of the word "seal," the letters "L. S.," and other words, letters, or characters of like import on instruments in writing.

Approved February 20, 1883, 45.

Seal Unnecessary.

2735. SECTION 1. The word "seal," and the initial letters "L. S.," and other words, letters, or characters of like import, opposite the name of the signer of any instrument in writing, are hereby declared unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument shall not be construed to impair the validity of such instrument.

An Act concerning records now in the custody of County Recorders of this state.

Approved February 20, 1873, 63.

Records to Impart Notice.

2736. SECTION 1. All instruments of writing relating to mining claims now copied into books of mining or other records, now in the office of the County Recorders of the several counties of this state, shall, after the passage of this Act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of the contents thereof; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired or vested.

Copies May Be Read in Evidence.

2737. SEC. 2. Copies of the records of all such instruments mentioned in section one of this Act, duly certified by the Recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are now or may hereafter be provided by law, for using copies of instruments relating to mining claims or real estate, duly executed or acknowledged, or proved and recorded.

COMMERCIAL LAW AND PARTNERSHIP.

An Act concerning the payment in money of debts and other obligations.

Approved February 15, 1893, 121.

Legal Money.

2738. SECTION 1. On and after the passage of this Act, all official bonds and undertakings, and also all obligations of debt, judgments or executions stated in terms of dollars and to be paid in money, shall be payable in either the standard silver or gold coins or other legal money authorized by the Congress of the United States. *As amended, Stats. 1895, 13.*

An Act concerning the liabilities of joint debtors.

Approved February 15, 1866, 67.

Joint Debtor May Be Released.

2739. SECTION 1. Any one of two or more joint debtors, or parties jointly, or

having a seal, or some Notary Public or Justice of the Peace, or by any Commissioner appointed by the Governor of this state, for that purpose; *provided*, that when the acknowledgment is taken by a Justice of the Peace, the same shall be accompanied with the certificate of the Clerk of a court of record of the county having a seal as to the official character of the Justice and the authenticity of his signature.

See, also, Sec. 2642.

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Penalty for Refusal or Neglect.

2731. SEC. 2. Any officer aforesaid refusing or neglecting to comply with the requirements of this Act shall be deemed and held guilty of a misdemeanor, and, on conviction thereof, fined before any court of competent jurisdiction in any sum not less than fifty nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section.

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Approved February 20, 1883, 45.

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2731. SEC. 2. Any officer aforesaid refusing or neglecting to comply with the requirements of this Act shall be deemed and held guilty of a misdemeanor, and, on conviction thereof, fined before any court of competent jurisdiction in any sum not less than fifty nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section.

An Act for the relief of purchasers at sales of real estate, or any interest therein, by public officers.

Approved December 12, 1882, 13.

Officers' Deeds.

2732. SECTION 1. Where lands, or any estate or interest therein have been or may hereafter be sold by a Sheriff or Constable, or other authorized officer, for taxes, or under an execution or order of sale, and the purchaser or his assigns may be entitled to a deed, and the Sheriff or other officer who made the sale shall have died, or shall be absent from the territory, or in any way disqualified, it shall be lawful for the successor of the said Sheriff or Constable, or other officer to make such deed to such purchaser, his assignee or assignees, in the same manner and with the same effect as if made by the officer making the sale.

Effect of Deed.

2733. SEC. 2. Such deeds, so made as aforesaid, shall have the same force and effect as evidence as if made by the officer making such sale.

An Act to provide for marks instead of signatures.

Approved December 17, 1862, 33.

Marks Instead of Signatures.

2734. SECTION 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

An Act to provide for the omission of the word "seal," the letters "L. S.," and other words, letters, or characters of like import on instruments in writing.

Approved February 20, 1883, 45.

Seal Unnecessary.

2735. SECTION 1. The word "seal," and the initial letters "L. S.," and other words, letters, or characters of like import, opposite the name of the signer of any instrument in writing, are hereby declared unnecessary to give such instrument legal effect, and any omission to use them by the signer of any instrument shall not be construed to impair the validity of such instrument.

An Act concerning records now in the custody of County Recorders of this state.

Approved February 20, 1873, 63.

Records to Impart Notice.

2736. SECTION 1. All instruments of writing relating to mining claims now copied into books of mining or other records, now in the office of the County Recorders of the several counties of this state, shall, after the passage of this Act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of the contents thereof; *provided*, that nothing herein contained shall be construed to affect any rights heretofore acquired or vested.

Copies May Be Read in Evidence.

2737. SEC. 2. Copies of the records of all such instruments mentioned in section one of this Act, duly certified by the Recorder in whose custody such records are, may be read in evidence under the same circumstances and rules as are now or may hereafter be provided by law, for using copies of instruments relating to mining claims or real estate, duly executed or acknowledged, or proved and recorded.

COMMERCIAL LAW AND PARTNERSHIP.

An Act concerning the payment in money of debts and other obligations.

Approved February 15, 1893, 121.

Legal Money.

2738. SECTION 1. On and after the passage of this Act, all official bonds and undertakings, and also all obligations of debt, judgments or executions stated in terms of dollars and to be paid in money, shall be payable in either the standard silver or gold coins or other legal money authorized by the Congress of the United States. *As amended, Stats. 1895, 13.*

An Act concerning the liabilities of joint debtors.

Approved February 15, 1866, 67.

Joint Debtor May Be Released.

2739. SECTION 1. Any one of two or more joint debtors, or parties jointly, or

jointly and severally, bound by any contract or judgment, may be released from his, her, or its liability upon such contract or judgment by the creditor or creditors, and such release shall not operate, nor be held to operate, in law as a release to the other debtor or debtors upon such contract or judgment, except as to the released debtor's proportion of such liability or debt, estimated upon the basis of the number of such debtors; but such release shall operate only as a release of all liability of such debtor to the creditor in such contract or judgment, and as a credit upon the same of such proportionate sum as herein provided.

Hoppin v. First Nat. Bank, 24 Nev.

Not Necessary to Action.

2740. SEC. 2. It shall not be necessary to make the party released, as provided in the foregoing section, a party to any action upon such contract, but the creditor or creditors aforesaid may pursue the remaining debtors for the remaining portion of such debt, the same as though no such release had been made.

Credit on Judgment.

2741. SEC. 3. In case a release as aforesaid be made to any judgment debtor by the judgment creditor, the Judge or Justice shall order the proper credit, as aforesaid, made upon such judgment, and that such debtor be released from liability upon the same.

An Act in relation to money of account and interest.

Approved November 28, 1861, 99.

Money.

2742. SECTION 1. The money of account of this territory shall be the dollar, cent and mill; and all the accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Accounts Not Vitiated.

2743. SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry originally made, or any note, bond or other instrument, expressed in any other money of account, but the same shall be reduced to dollars, or parts of dollars, as hereinbefore directed, in any suit thereupon.

Judgments, How Computed.

2744. SEC. 3. In all judgments and decrees, rendered by any court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment, or other proceedings, shall be considered erroneous for such omission.

Legal Interest.

2745. SEC. 4. When there is no express contract, in writing, fixing a different rate of interest, interest shall be allowed at the rate of seven per cent per annum for all moneys after they become due on any bond bill or promissory note, or other instrument of writing, on any judgment recovered before any court in this state for money lent, for money due on the settlement of accounts from the day on which the balance is ascertained, and from money received to the use of another. *As amended, Stats. 1887, 82.*

INTEREST ON JUDGMENTS—STATUTE CONSTRUED. Section 4 means that interest shall be allowed at the legal rate on all moneys after they become due, on any judgment recovered before any court in this state. *State v. D. V. Stock and Land Co., 21 Nev. 88.*

Compound Interest Not Given.

2746. SEC. 5. Parties may agree, in writing, for the payment of any rate of interest whatever on money due, or to become due, on any contract. Any judg-

ment rendered on such contract, shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgment; *provided*, only the amount of the original claim or demand shall draw interest after judgment.

1. **INTEREST, AS SUCH, TO BE COLLECTED ONLY WHERE AUTHORIZED BY STATUTE.** Interest, as such, can only be collected where authorized by statute. In an action upon contract, where there has been no settlement and the balance due upon the contract is uncertain and undetermined, interest cannot be collected. *Vietti v. Nesbitt*, 22 Nev. 390.
2. **INTEREST NOT ALLOWED ON AN OPEN ACCOUNT.** Judgment allowing such interest, where there is no special agreement, is so far erroneous. *Flannery v. Anderson*, 4 Nev. 437.
3. **INTEREST ON BALANCE OF ACCOUNT—BALANCE ASCERTAINED BY PLEADING.** Where an answer admitted an account for goods sold and delivered: *Held*, that such answer amounted to an ascertainment of the balance of account, and that under the statute interest was due from that time upon such balance. *Skinker v. Clute*, 9 Nev. 342.
4. **CONTRACT AS TO INTEREST.** When a party borrows money and agrees to pay a certain rate of interest until due, the contract is broken when the day of payment is passed and the note remains unpaid. After breach, in the absence of a continuing contract as to interest, the statute fixes the damages to be recovered. *McLane v. Abrams*, 2 Nev. 199; *Cox v. Smith*, 1 Nev. 161.
5. **INTEREST EXCEEDING LEGAL RATE CANNOT BE RECOVERED UNLESS THE PROMISE TO PAY IT BE IN WRITING.** *Williams v. Glasgow*, 1 Nev. 533.
6. **INTEREST TO BE RECOVERED MUST BE INSERTED IN THE JUDGMENT.** If a party claims, and is entitled to, any interest, it should be inserted in the judgment. *Solen v. V. & T. R. Co.*, 15 Nev. 313.
- INTEREST ALLOWED IN ACTIONS EX DELICTO.** Interest is allowable upon the amount of a judgment recovered in an action *ex delicto*. *Id.*
7. **COMPOUND INTEREST NOT SANCTIONED.** *Cox v. Smith*, 1 Nev. 161.
8. **INTEREST AS DAMAGES IN REPLEVIN CASE.** *Blackie v. Cooney*, 8 Nev. 41.
9. **INTEREST TO BE RECOVERED MUST BE INSERTED IN THE JUDGMENT.** If a party claims, and is entitled to, any interest, it should be inserted in the judgment. *Solen v. V. & T. R. Co.*, 15 Nev. 313.
10. **PARTNERSHIP—PROPERTY APPROPRIATED BY ONE MEMBER OF FIRM. INTEREST ALLOWED.** *Folsom v. Marlette*, 23 Nev. 460.
- ADVANCEMENT FOR BENEFIT OF FIRM, WHAT IS—INTEREST ALLOWED.** *Id.*

An Act relative to bills of exchange and promissory notes.

Approved October 31, 1861, 4.

When Negotiable.

2747. SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or to his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

When Valid.

2748. SEC. 2. Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect and be negotiable, as above provided.

"Persons" Construed.

2749. SEC. 3. The word "person," in the last two preceding sections, shall be construed to extend to every corporation capable by law of making contracts.

Suit May Be Maintained.

2750. SEC. 4. The payees and indorsees of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and

indorsees of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Fictitious Persons.

2751. SEC. 5. Such notes, made payable to the maker thereof or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to the bearer.

Acceptance in Writing.

2752. SEC. 6. No person within this territory shall be charged as an acceptor on a bill of exchange unless his acceptance shall be in writing, signed by himself or his lawful agent.

On Separate Paper.

2753. SEC. 7. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

Promise to Accept.

2754. SEC. 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of any person who, upon the faith thereof, shall have received the bill for a valuable consideration.

Refusal to Accept.

2755. SEC. 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Damages for Not Accepting.

2756. SEC. 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

Constructive Acceptance.

2757. SEC. 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

Damages on Protested Bills.

2758. SEC. 12. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this territory, shall be as follows: 1. If such bill shall have been drawn upon any person or persons, in any of the United States east of the Rocky mountains, fifteen dollars upon the hundred upon the principal sum specified in such bill. 2. If such bill shall have been drawn upon any person or persons in any port or place in Europe, or in any foreign country, twenty dollars upon the hundred upon the principal sum specified in such bill.

Interest.

2759. SEC. 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-

payment shall have been given and payment of such principal sum shall have been demanded.

Rates of Exchange.

2760. SEC. 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rate of exchange existing between this territory and the place on which such bill shall have been drawn at the time of the demand of payment or of notice of non-payment.

In Foreign Currency.

2761. SEC. 15. If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency at the time of the demand of payment.

Damages for Non-Acceptance.

2762. SEC. 16. When a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

By Whom Recovered.

2763. SEC. 17. The damages allowed by this Act shall be recovered only by the holder of the bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

Notice of Dishonor.

2764. SEC. 18. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given, by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, making, or indorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall, in addition thereto, specify thereon the postoffice to which he may require the notice to be addressed.

Not to Apply.

2765. SEC. 19. Nothing in this Act shall apply to bills of exchange, promissory notes, or other negotiable instruments, made or drawn before this Act takes effect.

1. **NEGOTIABLE NOTE—RIGHTS OF PLEDGEE AND OF OWNER.** A pledgee of a negotiable note, as collateral security, is entitled to be protected as a bona fide holder to the same extent as one who becomes the absolute owner, and may maintain suit therein in his own name as the real party in interest. The only difference between the rights of such parties is that the absolute owner may recover in full, while the pledgee, if there be equities, is restricted to the extent of his advances. *Hayden v. Nicoletti*, 18 Nev. 290.

IDEM—PARTNERSHIP—EVIDENCE OF. A negotiable note, payable to two or more persons jointly, is no evidence that it is owned in partnership; nor is the fact that such note is in the actual possession of one of the payees such evidence. Evidence reviewed: *Held*, that no partnership or agency existed between the payees of the notes in question. *Id.*

IDEM—TITLE. Title to a negotiable note, payable to order, passes only by indorsement and delivery. *Id.*

IDEM—INDORSEMENT BY ONE PAYEE. A negotiable note, payable to two or more persons jointly, indorsed by only one of the payees, is subject to any equities in favor of the maker, the same as though it had not been indorsed by either. Such a note is payable to all the payees, or to their joint order, and cannot be transferred except by the joint indorsement of all the payees. *Id.*

2. **PROMISSORY NOTE—EXISTENCE OF PARTIES.** There must be two parties to every promissory note: a maker and a payee. If the payee is not *in esse*, there is no note. *Wayman v. Torreyson*, 4 Nev. 124.

NOTE PAYABLE TO FICTITIOUS PAYEE NOT GOOD. *Id.*

3. **INDORSER.** Where a note is made by A to B, and by B indorsed to C, B is a regular indorser and entitled to all rights, and only subject to the liabilities of an indorser, although it may have been agreed in advance of the execution of the note that A was to make, and B to indorse the note, for the benefit of C. *Heintzelman v. L'Amoureux*, 3 Nev. 377.

4. **PROMISSORY NOTE—PAYMENT OF BY SURETY—RIGHTS OF SURETY.** Where a surety pays a promissory note, and has the same assigned to him, and commences an action upon the note: *Held*, that he is entitled to maintain an action of implied assumpsit for the amount paid, but he cannot sustain an action upon the note. *Frevert v. Henry*, 14 Nev. 191.

5. **INDORSEMENT.** There can be no strict indorsement of a negotiable promissory note, except by the payee or indorsee. *Van Doren v. Tjader*, 1 Nev. 380.

NOTICE. A guarantor of a promissory note will not be discharged by the failure of the holder to demand payment and give strict notice of non-payment. Reasonable notice of the dishonor of the note is all that he is entitled to. *Id.*

CONTRACT OF GUARANTY, though made at the time of the principal contract and upon the same consideration, must, nevertheless, be in writing, signed by the party to be charged, and must express the consideration which sustains it. *Id.*

6. **ENDORSEE OF PROMISSORY NOTE—RIGHT OF—TRANSFERRED CAUSA MORTIS—DONOR OR HIS REPRESENTATIVES ALONE TO QUESTION.** Where a note has been regularly endorsed and delivered by the payee to the endorsee, neither the maker of the note nor his creditors can challenge the right of the endorsee to receive payment thereof, upon the grounds that the endorsement was made *causa mortis*, and that the gift had been subsequently revoked by the recovery of the donor. Only the donor or his legal representatives could make such defense. *Hulley v. Chedic*, 22 Nev. 128.

7. **PAROL TESTIMONY.** When there is anything on the face of a note or bill of exchange showing that the party signing is acting for another, and not himself, parol testimony may be introduced to bind the principal. *Gillig v. Lake Bigler Road Co.*, 2 Nev. 214.

8. **CONSIDERATION OF NOTE GIVEN BY AGENT—WHEN SUFFICIENT.** *Estis v. Simpson*, 13 Nev. 472.

9. **PARTNERSHIP—PROMISSORY NOTES—PRESUMPTION.** Where the notes are given in the firm name the legal presumption is, that they were executed for a partnership purpose, and the burden of proof is upon defendants to establish the contrary. *Davis v. Cook*, 14 Nev. 265.

10. **NOTES OF MUNICIPAL CORPORATION, WHEN BINDING.** *Douglas v. Virginia City*, 5 Nev. 247.

11. **NOTE EXECUTED IN FIRM NAME.** A party can only be bound on a note executed in a firm name who is actually a member of the firm executing the same, or has held himself out as a member so as to give the firm credit on his responsibility. *Sargent v. Collins*, 3 Nev. 260.

An Act in relation to bills of exchange and other negotiable instruments.

Approved December 19, 1862, 80.

Negotiable Instruments, When Due.

2766. SECTION 1. All bills of exchange, checks, promissory notes, or other negotiable instruments, which by the terms thereof, are payable with or without grace, if the day for the payment thereof shall fall on any Sunday, or on any of the holidays designated in that certain Act entitled "An Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes," approved October thirtieth, eighteen hundred and sixty-one, the same shall become due and payable on the day previous to any of the days aforesaid.

An Act to designate the holidays to be observed in the acceptance and payment of bills of exchange and promissory notes.

Approved October 30, 1861, 1.

Holidays Designated.

2767. SECTION 1. The following days, namely: The first day of January, Washington's Birthday, or the twenty-second day of February, the Fourth day of July, Thanksgiving Day on the proclamation of the Governor, the twenty-fifth day of December, commonly called Christmas Day, shall for all purposes whatsoever as regards the presenting for payment, or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this Act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills or drafts; and any one of the holidays specified in this Act coming within the three days of grace shall be counted as one of such days.

PARTNERSHIP.

An Act requiring partners transacting business in this state to file certificate of partnership with names of each individual comprising the same.

Approved February 9, 1887, 46.

File With County Clerk—Publication.

2768. SECTION 1. Every partnership transacting business in this state under a fictitious name or a designation not showing the names of the persons interested as partners in such business, must file with the Clerk of the county in which the said partnership is carrying on business, a certificate, stating the names in full of the members of such partnership and their places of residence, and publish the same once a week for four successive weeks in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

Certificate Must Be Filed.

2769. SEC. 2. The certificate filed with the Clerk, as provided in section one of this Act, must be signed by the partners and acknowledged before some officer authorized to take the acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed and the publication made within two months after the passage of this Act. Persons doing business as partners contrary to the provisions of this Act, shall not maintain any action upon, or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required.

New Certificate.

2770. SEC. 3. On every change in the members of a partnership transacting business in this state under a fictitious name or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the County Clerk, and a new publication made, as required in this Act, on the formation of such partnership.

Clerk to Keep Register.

2771. SEC. 4. Every County Clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this

Act, entering in alphabetical order the name of every such partnership and of each partner therein, and he shall charge for each name so entered the sum of twenty-five cents, to be collected as other fees, which shall be full compensation for filing and registration.

Evidence of Fact.

2772. SEC. 5. Copies of the entries of a County Clerk, as herein directed, when certified by him, and affidavits of publication as herein directed made by the printer, publisher or chief clerk of a newspaper, are prima facie evidence of the facts therein stated; *provided*, that this Act shall not apply to any incorporation duly created and existing under and by virtue of the laws governing and providing for the creation of incorporations in this state and now engaged or hereafter to be engaged in doing business in this state.

1. **ULTIMATE FACTS SHOWING PARTNERSHIP AS BETWEEN PARTNERS.** As between partners the ultimate facts whence a partnership is deduced are first, the agreement, and second, its execution; summed up as the executed agreement: there can be no partnership between parties, so far as they solely are concerned, without a consent thereto and a fulfillment thereof. *Groves v. Tallman*, 8 Nev. 178.

2. **PARTNERSHIP CONTRACTS JOINT.** Partnership obligations are joint in their nature at least to the extent that one partner may always take advantage of the non-joinder of his copartner in an action on a partnership contract. *Tinkum v. O'Neale*, 5 Nev. 93.

JUDGMENT AGAINST ONE PARTNER BARS ACTION AGAINST HIS COPARTNER. A judgment against one partner upon a partnership contract merges the debt and constitutes a bar to a subsequent action for the same breach against his copartners. *Id.*

ACTION AGAINST PARTNER WHERE COPARTNER DISCHARGED IN BANKRUPTCY. Where one of two partners is discharged in bankruptcy, the other may be proceeded against alone. *Id.*

3. **PARTNERSHIP IN REAL ESTATE—BURDEN OF PROOF AS TO OWNERSHIP.** *Hogle v. Lowe*, 12 Nev. 286.

REAL ESTATE, WHEN PARTNERSHIP PROPERTY. *Id.*

4. **POWER OF PARTNERS TO BORROW MONEY.** A general partner in a mercantile business may borrow money for the benefit of the firm, and pledge its credit therefor, unless restrained by the articles of copartnership, of which the lender has notice. *Roney v. Buckland*, 4 Nev. 45.

5. **PARTNERS—NOT BOUND BY MORTGAGE OF COPARTNER.** *Arnold v. Stevenson*, 2 Nev. 234.

6. **REAL ESTATE—PURCHASE OF BY ONE PARTNER.** The purchase of real estate may or may not be within the scope of the partnership business. *Davis v. Cook*, 14 Nev. 265.

PURCHASE IN FIRM NAME BINDING. Plaintiff need not inquire as to consent of other partners. *Id.*

7. **PARTNERS, JOINT TENANTS.** Partners are *quasi* joint tenants, the survivor having a peculiar, qualified survivorship. *Whitmore v. Shiverick*, 3 Nev. 288.

A partner cannot sell his interest in partnership property so as to deprive his copartners of their lien thereon for partnership liabilities. Nor can a mortgage executed by one partner have such effect. *Id.*

8. **PARTNERSHIP PROPERTY MAY BE SOLD WITHOUT THE RIGHT OF REDEMPTION.** Where the property of an insolvent partnership is ordered to be sold in order to pay the partnership debts, the right of redemption does not exist. *Rhoades v. Williams*, 12 Nev. 20.

9. **WHO NOT PARTNERS.** *Jones v. O'Farrell*, 1 Nev. 354.

10. **LIABILITY AS PARTNERS.** Person sharing in profits as compensation for labor not liable. *Mason v. Hackett*, 4 Nev. 420.

11. **PARTNERS—WHEN ACTION AT LAW MAY BE MAINTAINED BETWEEN.** When balance has been found and agreed upon. *Wicks v. Lippman*, 13 Nev. 499.

12. **DISSOLUTION OF COPARTNERSHIP—RELATION OF PARTNERS—SURETY AND PRINCIPAL DEBTOR—PAYMENT OF INDEBTEDNESS.** Upon the dissolution of a copartnership where there is an agreement that one partner assumes and will pay all the debts of the firm, he thereby becomes the principal debtor, and the other partner becomes his surety, as between themselves and all others dealing with them with knowledge of the facts, and the surety has the right to protect himself by settling the indebtedness for which he is liable, at any time, whether it is due or not. *Barber v. Gillson*, 18 Nev. 89.

13. **PARTNERSHIP—PUBLICATION OF NOTICE OF DISSOLUTION—LIABILITY OF PARTY WHO HOLDS HIMSELF OUT TO THE WORLD AS A PARTNER.** If a retiring partner, after notice of dissolution is published in a newspaper, holds himself out to the world as a partner, he must, in order to relieve himself from liability on account of such publication, prove that knowledge of such notice of dissolution came to the actual knowledge of plaintiff. *Hixon v. Pixley*, 15 Nev. 475.

KNOWLEDGE OF DISSOLUTION—LAPSE OF TIME TO BE CONSIDERED. *Id.*

14. **DISSOLUTION OF COPARTNERSHIP—PAYMENT OF TAXES.** *Young v. Clute*, 12 Nev. 31.

ALLOWANCE OF COSTS in suit within the discretion of the court. *Id.*

15. **SURVIVING PARTNER—RIGHT OF ACTION.** A surviving partner is entitled to sue in his representative capacity for the amount due the partnership, and in his own name for the amount due to himself individually. The respective demands may be united in the same action, but should be separately stated. *Quillen v. Arnold*, 12 Nev. 234.

16. **ACTION BY SURVIVING PARTNER—SUFFICIENCY OF ALLEGATION OF COPARTNERSHIP.** *Reese v. Kinkead*, 17 Nev. 447, and 18 Nev. 126.

An Act to authorize the formation of limited partnerships.

Approved December 19, 1862, 55.

Limited Partnerships.

2773. **SECTION 1.** Limited partnerships, for the transaction of mercantile, mechanical, mining, or manufacturing business, within this territory, may be formed by two or more persons upon the terms and subject to the conditions and liabilities prescribed in this Act; but nothing contained in this Act shall authorize such partnerships for the purpose of banking or insurance.

Responsibilities of Partners.

2774. **SEC. 2.** The said partnerships may consist of one or more persons, who shall be called general partners, who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute to the common stock a specific sum, in actual cash payment, as capital, who shall be called special partners, and who shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned.

Terms of Business.

2775. **SEC. 3.** The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Acknowledged and Recorded.

2776. **SEC. 4.** No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, and recorded in the office of the Recorder of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties, a copy of the certificate, certified by the Recorder in whose office it shall be recorded, shall be filed and recorded in like manner in the office of the Recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable, as general partners, for all the engagements thereof.

Publication.

2777. **SEC. 5.** The partners shall, for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a news-

paper printed in the county where their principal place of business is situated; and if no such paper be there printed, then in a newspaper in the territory nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

Renewal.

2778. SEC. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded and published, in like manner as is provided in this Act for the original formation of limited partnerships, and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

General and Special Partners.

2779. SEC. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and the general partners only shall transact the business. If the name of any special partner shall be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner, he shall be deemed and treated as a general partner.

Capital Stock.

2780. SEC. 8. During the continuance of any partnership, under the provisions of this Act, no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuance or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

Assignment.

2781. SEC. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

Publication of Assignment.

2782. SEC. 10. In case of such assignment, as provided for in the preceding section, the assent of the creditors shall be presumed, unless, within sixty days after notice thereof, they shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in the territory nearest thereto, within fourteen days after the making such assignment.

Suits.

2783. SEC. 11. All suits respecting the business of such partnerships shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this Act that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits; and excepting, also, those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock, as before provided.

Dissolution of Partnerships.

2784. SEC. 12. No dissolution of a limited partnership shall take place

except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the Recorder's office in which the original certificate, or the certificate of renewal or continuation of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificates of the formation of such partnerships were published, according to the provisions of this Act; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in this territory nearest thereto.

Liability and Rights of Partners.

2785. SEC. 13. In all cases not otherwise provided for in this Act, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

ESTATES OF DECEASED PERSONS.

An Act to regulate the settlement of the estates of deceased persons.

Approved March 23, 1897, 119.

District Court to Have Exclusive Jurisdiction.

2786. SECTION 1. Wills may be proved and letters testamentary or of administration granted in the county of which deceased was a resident at the time of death, whether death occurred in such county or elsewhere, and the district court of such county shall have exclusive jurisdiction of the settlement of such estates, whether such estate is in one or more counties. The estate of a non-resident decedent may be settled by the district court of any county wherein any part of such estate may be. The district court to which application shall first be made shall have exclusive jurisdiction of the settlement of such estates.

Wills Delivered to Court.

2787. SEC. 2. Any person having any will in his possession shall within ten days after knowledge of the death of the person who executed such will deliver it into the district court that has jurisdiction of the case, or to the person named in such will to execute it.

Person Named as Executor.

2788. SEC. 3. Any person named as executor or executrix in any will shall within fifteen days after the death of the testator or testatrix, or within fifteen days after knowledge of such naming, present the will, if in possession of it, to the district court.

Renunciation of Trust—Petition.

2789. SEC. 4. Any person so named may decline the trust by filing a renunciation in writing. If such person intends to accept the trust, there shall be presented a petition for the probating of such will, setting forth in such petition the facts necessary to give the court jurisdiction, and, when the same are known, the names, ages and residence of the heirs and devisees of the deceased, also the character and probable value of the estate and praying that the will be admitted to probate, and that letters testamentary be issued thereon to the party entitled thereto. If the jurisdictional facts existed, but are not fully set forth in the petition and the same shall be afterwards proved in the course of the administration, the probate of the will and the subsequent proceedings shall not on account of such want of jurisdictional averments be held void.

Liability for Neglect.

2790. SEC. 5. Every person who shall neglect to perform any of the duties

required in the preceding sections, without reasonable cause, shall be liable to every person interested in the will for the damages such interested person may sustain by reason of such neglect.

Petition for Probate.

2791. SEC. 6. Any person named in a will to execute it, though not in possession of such will, may present a petition to the district court having jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary be issued.

By Interested Person.

2792. SEC. 7. Any person having an interest in a will may, in like manner, present a petition, praying that it may be required to be produced and admitted to probate.

Production of Will.

2793. SEC. 8. If it be alleged in any petition that any will of a deceased person is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring such person to produce it at a time to be named in the order.

Penalty for Refusal.

2794. SEC. 9. Any person having the possession of a will and neglects or refuses to produce it in obedience to such order, such person may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until such person produces the will.

Petition Signed and Filed.

2795. SEC. 10. All petitions for the probate of a will, and for the issuance of letters, shall be signed by the party petitioning, or the attorney for such petitioners, and filed with the Clerk of the Court who shall publish a notice in some newspaper, if there is one printed in the county, if not, then by posting such notice in three public places in the county, stating in such notice the filing of such petition, the object, and designating a time for proving such will, which shall not be less than ten nor more than twenty days.

Powers of Judge.

2796. SEC. 11. The Judge may make all necessary orders to enforce the production of any will at chambers.

Citation to Heirs.

2797. SEC. 12. If the heirs of the deceased reside in the county, the party petitioning for the probate of a will shall obtain from the Clerk a citation and cause it to be served upon such heirs, requiring them to appear and contest the probate of the will at the time appointed by the Clerk, if they so desire. Such citation shall be served at least three days before the time so appointed.

To Persons Named in Will.

2798. SEC. 13. If a petition for probate is presented by any person other than the one named in the will to execute it, or if it is presented by one of several of such persons named in the will, citation shall in like manner issue and be served upon such not joining in the petition, if resident within the county.

Subpenas.

2799. SEC. 14. The Clerk shall also issue subpenas to the subscribing witnesses to a will, if they reside in the county.

Hearing of Proof.

2800. SEC. 15. At the time appointed, or at any other time to which the hearing may be continued, upon proof being made by affidavit or otherwise, to the satisfaction of the court, that notice has been given as required by the pre-

ceding sections, the court shall proceed to hear the testimony in proof of the will. All witnesses who appear and are sworn shall testify orally.

Who May Contest.

2801. SEC. 16. Any person interested may appear and contest the probate of a will. If it appears that they are minors or other persons who are interested in the estate, but reside out of the county, and are unrepresented, the court shall appoint some attorney to represent them.

One Witness Sufficient.

2802. SEC. 17. If no person shall appear to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if such testimony shall show, that the will was executed in all particulars, as required by law, and that the testator or testatrix was of sound mind at the time of its execution.

Contest and Proceedings.

2803. SEC. 18. If any person appears to contest the probate of a will, such person shall file a statement in writing, setting out the grounds of contest, and file the same with the Clerk, which shall constitute a joinder of such issues of fact as may be alleged in opposition to the will, such as respects the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament, under restraint, or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will. And any and all issues of fact shall be tried as issues of facts are tried in other cases in the district court.

Witnesses Examined.

2804. SEC. 19. When the probate of a will is contested all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence or insanity of any of them shall be satisfactorily shown to the court.

Certificates of Proof Recorded.

2805. SEC. 20. If the court shall be satisfied upon the proof taken when heard by the court, or by the verdict of a jury, in case a jury trial is had, that the will was duly executed by a person at the time of sound and disposing mind, and not under restraint, undue influence or fraudulent representation, the court, by decree in writing, shall admit the will to probate, whereupon the will and the decree admitting it to probate shall be recorded together by the Clerk in a book to be provided for that purpose.

Evidence.

2806. SEC. 21. A copy of the record of the will and decree admitting it to probate, exemplified by the Clerk in whose custody it may be, shall be received in evidence and be as effectual in all cases as the original would be if proved.

Foreign Wills Valid, When.

2807. SEC. 22. All wills which shall have been duly proved and allowed in any other of the United States, or any territory thereof, or in any foreign country or state, may be admitted to probate by the district court of any county in which the deceased shall have left any estate; *provided*, it has been executed in conformity with the laws of the place where made.

Probate of Copy.

2808. SEC. 23. When a copy of a will, as mentioned in the preceding sections, and the probate thereof, duly authenticated, shall be filed in the Clerk's office, with a petition for letters, notice shall be given for the hearing thereof, and such proceedings shall be had as in case of an original will for probate, and with like force and effect.

Lost Will, How Proven.

2809. SEC. 24. Whenever any will shall be lost by accident, or destroyed by fraud, the district court shall have power to take proof of the execution and validity of such will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of wills in other cases.

What to Be Proved.

2810. SEC. 25. No will shall be allowed to be proved as a lost or destroyed will unless the same shall be proved to have been in existence at the time of the death of the person whose will it is claimed to be, or be shown to have been fraudulently destroyed in the lifetime of such person, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

Pending Proof.

2811. SEC. 26. If before or during the pendency of an application to prove a lost or destroyed will letters of administration shall have been granted upon the estate of the deceased, or letters testamentary of any previous will of such deceased, the court shall have authority to restrain such administration if necessary to protect the interests of legatees or devisees claiming under the lost or destroyed will.

Letters to Be Issued, When.

2812. SEC. 27. When any will shall have been admitted to probate the district court shall direct letters thereon to issue to the person or persons named in the will to execute the same, who may be competent to discharge the trust, and who shall appear and qualify.

Executors, Who Competent.

2813. SEC. 28. No person shall be deemed competent to serve as executor or executrix who at the time the will is probated shall be: First—Under the age of majority; or, second, who shall have been convicted of an infamous crime; or, third, who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding. If any such person be named as the sole executor or executrix in any will, or if all persons so named are incompetent, or shall renounce the trust, or fail to appear and qualify, letters of administration with the will annexed shall issue.

Objections to Executors.

2814. SEC. 29. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors or executrices, or any of them, and such objections shall be heard and determined by the court. A petition may also be filed for the issuance of letters of administration, with the will annexed, in all proper cases.

Authority Revoked.

2815. SEC. 30. When an unmarried woman who shall have been appointed executrix shall marry, her marriage shall extinguish her authority. When a married woman is nominated as executrix she may be appointed and serve, in all respects, as if she were a *femme sole*.

Executor of Executor.

2816. SEC. 31. No executor of an executor shall as such be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor or executrix of any last will, letters of administration, with the will annexed of the estate of the first testator or testatrix left unadministered, shall be issued.

Letters to Minors.

2817. SEC. 32. When any person under the age of twenty-one years shall be named executor, or under the age of eighteen years executrix, letters of adminis-

tration with the will annexed shall be granted, during the minority of such person, unless there is another executor or executrix, who shall accept the trust and qualify, in which case letters testamentary shall issue to such, who shall administer the estate, until the minor shall arrive at legal age, when such may be admitted as joint executor or executrix.

Power of One or More of Several Executors.

2818. SEC. 33. When all the persons named as executors or executrices shall not be appointed by the court, such as shall be appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be effectual for every purpose as if all had been appointed, and should act together. When there are two executors or administrators the acts of one alone shall be valid if the other is absent from the state, or for any cause is laboring under any legal disability, and when there are more than two, the act of a majority shall be sufficient.

Power of Administrator.

2819. SEC. 34. Administrators with the will annexed shall have the same authority as the executor named in the will would have had if he should have qualified, and their acts shall be as effectual for every purpose.

Letters Signed.

2820. SEC. 35. Letters testamentary and of administration with the will annexed shall be signed by the Clerk and be under the seal of the court.

Form of Letters.

2821. SEC. 36. Letters testamentary may be in substantially the following form, to wit (after properly entitling court and cause): "The last will of-----, deceased, having been duly admitted to probate in our said court, -----, who is named therein, was by our said court on the---day of-----, 189---, duly appointed executor, who having qualified as such (*is*) hereby authorized to act by virtue thereof. In testimony whereof, I have officially signed these letters and affixed hereto the seal of said court, this---day of-----, 189---."

Form of, With Will Annexed.

2822. SEC. 37. Letters of administration with the will annexed may be substantially in the following form, to wit (after properly entitling the court and cause): "The last will of-----, deceased, having been duly admitted to probate in our said court, and there being no executor named in said will (or as the case may be), -----was by our said court, on the---day of-----, 189---, duly appointed as administrator with the will annexed, and who, having duly qualified as such, is hereby authorized to act by virtue thereof. In testimony whereof, I have officially signed these letters and affixed hereto the seal of said court, this---day of-----, 189---."

Who Entitled to Letters.

2823. SEC. 38. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order: First—The surviving husband or wife, or such person, as he or she may request to have appointed. Second—The children. Third—The father, or mother. Fourth—The brother. Fifth—The sister. Sixth—The grandchildren. Seventh—Any other of the kindred entitled to share in the distribution of the estate. Eighth—The creditors. Ninth—The Public Administrator. Tenth—Any of the kindred, not above enumerated, within the fourth degree or consanguinity. Eleventh—Any person or persons legally competent.

WHEN NO ADMINISTRATOR NECESSARY. No legal presumption of existence of debts. *Wright v. Smith*, 19 Nev. 143.

shall not be liable for any subsequent act, default or misconduct of the executor or administrator.

Letters Revoked.

2854. SEC. 69. If the executor or administrator neglect or refuse to give new sureties to the satisfaction of the Judge, on the return of the citation, the court or Judge being satisfied the citation has been personally served, or within such reasonable time as the Judge shall allow, not exceeding five days, unless the surety or sureties petitioning shall consent to a longer extension of time, the court or Judge shall revoke the letters granted.

Special Appointed.

2855. SEC. 70. When there shall be a delay in granting letters testamentary or administration, from any cause, or when such letters shall have been granted irregularly or no sufficient bond shall have been filed as required by law, or when no petition shall be filed for such letters, and in any other proper case, the District Judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary to preserve the estate.

Appointment, How Made.

2856. SEC. 71. The appointment may be made at chambers, and without notice, and shall be made by entry upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bonds, as fixed by the Judge, the Clerk shall issue letters of administration, with a certified copy of the order attached, to such person.

Who to Have Preference.

2857. SEC. 72. In making the appointment of a special administrator, the District Judge shall give preference to the person or persons entitled to letters testamentary or of administration, but no appeal shall be allowed from the appointment.

Powers and Duties.

2858. SEC. 73. The special administrator shall collect and preserve for the executor or administrator when appointed, all the goods, chattels and debts of the deceased, all incomes, rents, issues and profits, claims and demands of the estate, shall take charge and management of, enter upon and preserve from damage, waste and injury the real estate, and for any such and all necessary purposes, may commence, maintain or defend suits and other legal proceedings as an administrator. He may sell such perishable estate as the district court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but in no case shall he be liable to an action by any creditor, on any claim against the estate, nor pay any claim against the deceased.

Powers Cease, When.

2859. SEC. 74. When letters testamentary or of administration shall be granted on the estate of the deceased, the powers of the special administrator shall cease and he shall forthwith deliver to the executor or administrator all the property and effects of the deceased in his hands, and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

To Render Account.

2860. SEC. 75. The special administrator shall also render an account, under oath, of his proceedings in like manner as other administrators are required to do.

Special Administrator Appointed.

2861. SEC. 76. Whenever an executor or administrator shall die or his letters be revoked, and the circumstances require the immediate appointment of an administrator, the District Judge may appoint a special administrator, as provided in the preceding sections.

Remaining Executor to Proceed.

2862. SEC. 77. In case any one of several executors or administrators of the same estate to whom letters shall have been granted shall die, become lunatic, be convicted of an infamous crime, or otherwise become incapable of executing the trust, or, in case the letters testamentary or of administration shall be revoked or annulled according to law with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

Shall Issue Letters, When.

2863. SEC. 78. If all such executors or administrators shall die or from any cause become incapable of executing the trust, or the power and authority of all of them shall be revoked or annulled according to law, the district court shall direct letters of administration with the will annexed or otherwise to be issued to the widow, next of kin or others, in the same manner as directed in relation to original letters of administration. The administrator so appointed shall give bond in like penalty with like sureties and conditions as hereinbefore required of administrators and shall have the like power and authority.

Letters Revoked.

2864. SEC. 79. If after granting letters of administration on the ground of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked and the power of the administrator shall cease, and he shall render an account of his administration within such time as the court shall direct.

New Administration.

2865. SEC. 80. In such case, the executor of the will or the administrator with the will annexed shall be entitled to demand, sue for and collect all the goods, chattels and effects of the deceased remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters.

Resignation.

2866. SEC. 81. Any executor or administrator may at any time, by writing filed in the district court, resign his appointment; *provided*, he shall first settle his accounts and deliver up all the estate to such person as may be appointed by the court.

Before Revocation.

2867. SEC. 82. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued to execute lawfully the duties of his trust.

Transcript Same as Letters.

2868. SEC. 83. A transcript from the minutes of court, showing the appointment of any person as executor or administrator, together with the certificate of the Clerk, under his hand and the seal of the court that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him, and have not been revoked, shall have the same effect in evidence as the letters themselves.

Judge Not Competent, When.

2869. SEC. 84. No District Judge shall admit to probate any will, or grant

letters testamentary, or of administration, in any case where he shall be interested as next of kin to the deceased or as a legatee or devisee under the will, or where he shall be named as executor or trustee in the will, or shall be a witness thereto.

Another Judge May Act.

2870. SEC. 85. When any District Judge who would otherwise be authorized to act shall be precluded from acting from the causes mentioned in the preceding section, or when he shall in any manner be interested, he shall call a District Judge of another district to hold the court of his county; and such Judge shall hold such court, and be vested with all the powers of the court and Judge so disqualified, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

Inventory, Return Of.

2871. SEC. 86. Every executor or administrator shall make and return to the court, within twenty days after his appointment, unless the court shall extend the time, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

Appraisement, How Made—Compensation.

2872. SEC. 87. For the purpose of making the appraisement, the court or Judge shall appoint three disinterested persons, any two of whom may act, and who shall be entitled to a reasonable compensation for their services, to be allowed by the court. This compensation as allowed shall be in the form of a bill of items for their services, including all necessary disbursements, which shall be sworn to by them, and filed at the same time as the inventory. The compensation shall not exceed five dollars per day each, and may be paid out of the estate at any time. The inventory shall include all the estate of the deceased, wherever situated.

To Take Oath—Inventory to Contain.

2873. SEC. 88. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath to be attached to the inventory, that they will truly, honestly and impartially appraise the property which shall be exhibited to them or called to their attention, according to the best of their knowledge and ability. They shall then proceed to appraise the property of the estate; each article or parcel shall be set down separately with the value thereof in dollars and cents, in figures opposite to each article or parcel respectively. The inventory shall contain all the estate of the deceased, real and personal; a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money, belonging to deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon if any, with their dates, and the sum which in the judgment of the appraisers may be collectible on each debt, interest or security. The inventory shall also show, so far as can be ascertained, what portion of the estate is community property, and what portion is the separate property of the deceased; also an account of all moneys belonging to the deceased which shall have come to the hands of the executor or administrator.

Does Not Discharge Debt.

2874. SEC. 89. The naming of any person as executor in a will shall not operate as a discharge of any just claim which the testator had against such person, but the claim shall be included in the inventory, and the person named as executor shall be liable for the same, or for so much money in his hands at the time the debt or demand becomes due, if he be the executor.

Discharge of Debt Not Valid, When.

2875. SEC. 90. The discharge or bequest in a will of any debt or demand of the testator against any person named as executor in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall

be construed as a specific bequest only of such debt or demand; and the amount thereof shall be included in the inventory and shall, if necessary, be applied in payment of his debts. If not necessary for that purpose, it shall be disposed of in the same manner as other specific legacies or bequests.

Oath of Appraisers.

2876. SEC. 91. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath, before any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to his possession or of which he has knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be indorsed upon or annexed to the inventory.

Non-Return of Inventory.

2877. SEC. 92. If an executor or administrator shall neglect or refuse to return the inventory, within the time prescribed, or within such further time as the court or Judge shall, for good cause, allow, the court may, with or without further notice, revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

Supplemental Inventory.

2878. SEC. 93. Whenever any property not mentioned in any inventory that shall have been made shall come to the possession or knowledge of the executor or administrator, he shall return a supplementary inventory of such property within twenty days after the discovery thereof in the same manner as an original inventory. If the first appraisers are not in the county others may be appointed. The court may enforce the making of a supplementary inventory as an original.

Right of Possession.

2879. SEC. 94. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled, or until delivered over by order of the district court to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings and fences thereon which are under his control.

Personal Estate.

2880. SEC. 95. The personal estate of the deceased which shall come into the hands of the executor or administrator shall be first chargeable with the payment of the debts and expenses, and if the goods, chattels, rights and credits in the hands of the executor or administrator shall not be sufficient to pay the debts, expenses of administration and the allowances to the family of the deceased the whole, or such part as may be necessary for that purpose, of the real estate may be sold in the manner prescribed in this Act.

Conversion, Penalty.

2881. SEC. 96. If any person, before the granting of letters testamentary or of administration, shall convert to his or her own use, take or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable and be liable to an action by the executor or administrator of the estate for double the value of the property so converted, taken or alienated, to be recovered for the benefit of the estate.

Proceedings for Conversion.

2882. SEC. 97. If any executor or administrator, heir, devisee, legatee, creditor or other person interested in the estate of any deceased person shall complain, on oath, to the District Judge that any person has, or is suspected to have, con-

cealed, converted to his or her own use, conveyed away or otherwise disposed of any moneys, goods, chattels or effects of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title or interest of the deceased in or to any real or personal estate, or any claim or demand, or any last will of the deceased, the said Judge may cause such person to be cited to appear before the district court to answer, upon oath, upon the matter of such complaint. If such person be not in the county when letters have been granted, he or she may be cited and examined either before the district court of the county where he may be found, or before the court issuing the citation. But if in the latter case such person appears and shall be found innocent, his or her necessary expenses shall be allowed out of the estate.

Refusing to Answer Complaint—Power of Court.

2883. SEC. 98. If the person so cited should refuse to appear and submit to such examination, or to testify touching the matter of such complaint, the court may commit such person to the county jail, there to remain confined until he or she shall obey the order of the court, or be discharged according to law, and if upon such examination it shall appear that such person has concealed, converted to his or her own use, smuggled, conveyed away, or in any manner disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or under his control any deeds, conveyances, bonds, contracts or other writings, which contain evidence of, or tend to disclose, the right, title, interest or claim of the deceased to any real or personal estate, claim or demand, or any last will of the deceased, the district court may make an order requiring such person to deliver any such property or effects to the executor or administrator, at such time as the court may fix, and should such person fail to comply with such order, the court may commit he or she to the county jail till such order shall be complied with, or the person discharged according to law. The order of the court for the delivery of such property shall be prima facie evidence of the right of the executor or administrator to such property in any action that may be brought for the recovery thereof; and any judgment recovered therein shall be for double the value of the property, and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Person May Be Cited to Appear.

2884. SEC. 99. The District Judge, upon the complaint on oath of any executor or administrator, may cause any person who shall have been intrusted by such executor or administrator with any part of the estate of the decedent to be cited to appear before such court and render on oath a full account of any money, goods, chattels, bonds, accounts, or other papers or effects belonging to the estate which shall have come into his possession in trust for the executor or administrator, and if the person so cited shall fail or refuse to appear and render such account, he or she may be proceeded against as provided in the preceding section.

May Retain Homestead.

2885. SEC. 100. When any person shall die leaving a widow or a minor child or children, the widow, child or children shall be entitled to remain in possession of the homestead and of all the wearing apparel and provisions on hand of the family, and all of the household furniture, and shall also be entitled to a reasonable provision for their support, to be allowed by the District Judge at chambers or in court.

Property Set Apart for Use of Family.

2886. SEC. 101. Upon the return of the inventory or at any time thereafter during the administration, the court or Judge, of his own motion, or an application, may set apart for the use of the family of the deceased all personal property which is exempt by law from execution, and the homestead as designated by

the general homestead law now in force; whether such homestead has theretofore been selected as required by said law or not, and the property thus directed to be set apart shall not be subject to administration.

Allowance For Family.

2887. SEC. 102. If the whole property exempt by law be set apart, and should not be sufficient for the support of the widow, child or children, the district court or Judge shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family according to their circumstances during the progress of the settlement of the estate, which in case of an insolvent estate shall not be longer than one year after granting letters of administration.

Allowance, Priority Of.

2888. SEC. 103. Any allowance made by the court or Judge in accordance with the provisions of this Act shall be paid by the executor or administrator in preference to all other charges, except funeral charges.

Property Set Apart, How Apportioned.

2889. SEC. 104. When property shall have been set apart for the use of the family, in accordance with the provisions of this Act, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left a minor child, or children also, the one-half of such property shall belong to the widow, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the child or children.

Estate Not Administered Upon, When—Order of Court.

2890. SEC. 105. When any person shall die, leaving an estate the whole value of which does not exceed five hundred dollars, and there be a surviving husband or wife, and a minor child or children, such estate shall not be administered upon, but the whole thereof shall be by the court or Judge, by an order for that purpose, assigned and set apart for the support of the surviving husband or wife and minor children of deceased, or for the support of the minor child or children, if there be no surviving husband or wife. Such order may be made by the court or Judge on motion made by, or on behalf of, the surviving husband or wife, or next friend of any minor child or children, upon an affidavit setting forth the necessary facts, and the court or Judge being satisfied that the value of the whole of such estate does not exceed five hundred dollars.

To Go to Children, When.

2891. SEC. 106. If the widow has a maintenance derived from her own property equal to the portion set apart to her under the provisions of this Act, the whole property so set apart shall go to the minor children.

Appointment of Executor Published—Notice to Specify—Copy Filed.

2892. SEC. 107. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the court or Judge, and post copies thereof in three public places of the county, a notice of his appointment as such executor or administrator. Such notice shall be properly entitled of court and cause, specifying the date of appointment, the name of deceased, and shall be dated and officially signed by the executor or administrator, and shall direct that all persons having claims against the estate are required to file the same, with the proper vouchers and statutory affidavits attached, with the Clerk of the Court within three months from the date of the first publication of the notice. Such notice shall be published for at least once a week for four weeks. After the notice shall have been given as above required, a copy thereof, with the affidavit of publication and posting, shall be filed. *As amended, Stats. 1899, 110.*

cealed, converted to his or her own use, conveyed away or otherwise disposed of any moneys, goods, chattels or effects of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title or interest of the deceased in or to any real or personal estate, or any claim or demand, or any last will of the deceased, the said Judge may cause such person to be cited to appear before the district court to answer, upon oath, upon the matter of such complaint. If such person be not in the county when letters have been granted, he or she may be cited and examined either before the district court of the county where he may be found, or before the court issuing the citation. But if in the latter case such person appears and shall be found innocent, his or her necessary expenses shall be allowed out of the estate.

Refusing to Answer Complaint—Power of Court.

2883. SEC. 98. If the person so cited should refuse to appear and submit to such examination, or to testify touching the matter of such complaint, the court may commit such person to the county jail, there to remain confined until he or she shall obey the order of the court, or be discharged according to law, and if upon such examination it shall appear that such person has concealed, converted to his or her own use, smuggled, conveyed away, or in any manner disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or under his control any deeds, conveyances, bonds, contracts or other writings, which contain evidence of, or tend to disclose, the right, title, interest or claim of the deceased to any real or personal estate, claim or demand, or any last will of the deceased, the district court may make an order requiring such person to deliver any such property or effects to the executor or administrator, at such time as the court may fix, and should such person fail to comply with such order, the court may commit he or she to the county jail till such order shall be complied with, or the person discharged according to law. The order of the court for the delivery of such property shall be prima facie evidence of the right of the executor or administrator to such property in any action that may be brought for the recovery thereof; and any judgment recovered therein shall be for double the value of the property, and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

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Appointment of Executor Published—Notice to Specify—Copy Filed.

2892. SEC. 107. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one, if not, then in such newspaper as may be designated by the court or Judge, and post copies thereof in three public places of the county, a notice of his appointment as such executor or administrator. Such notice shall be properly entitled of court and cause, specifying the date of appointment, the name of deceased, and shall be dated and officially signed by the executor or administrator, and shall direct that all persons having claims against the estate are required to file the same, with the proper vouchers and statutory affidavits attached, with the Clerk of the Court within three months from the date of the first publication of the notice. Such notice shall be published for at least once a week for four weeks. After the notice shall have been given as above required, a copy thereof, with the affidavit of publication and posting, shall be filed. *As amended, Stats. 1899, 110.*

Claims to Be Filed—When Claim Barred.

2893. SEC. 108. All persons having claims against the deceased must, within three months after the first publication of the notice specified in the preceding section, file the same with the necessary vouchers with the Clerk of the Court, who shall file and register each claim. If a claim be not filed with the Clerk within three months after the first publication of said notice, it shall be forever barred; *provided*, that when it shall be made to appear by the affidavit of the claimant, or by other proof that he had no notice as provided in this Act, to the satisfaction of the court or Judge, it may be filed at any time before the filing of the final account. *As amended, Stats. 1899, 111.*

DECEDENT'S ESTATES—NOTICE TO CREDITORS. It is unnecessary that the notice to be given by an executor or administrator to the creditors of an estate should specify whether the place where the claims are to be presented is his place of residence or his place of business. *Douglass v. Folsom, 21 Nev. 441.*

IDEM—PRESENTATION OF CLAIMS. Claims against an estate may be legally presented at the place where the notice directs them to be presented, without regard to whether the executor or administrator is there to receive them. His absence from the state makes no difference in this rule. *Id.*

IDEM—DELIVERY OF CLAIM TO ATTORNEY OF ESTATE. Under the statutes of Nevada it is not a sufficient presentation of such a claim to hand it to the "attorney for the estate"; at least not without showing that it actually reached the administratrix within the proper time for the presentation of claims. *Id.*

Claim to Be Supported by Affidavit—Defective Affidavit.

2894. SEC. 109. Every claim filed with the Clerk shall be supported by the affidavits of the claimant that the amount is justly due (or if the claim is not yet due, that the amount is a just demand and will be due on the ____ day of _____), that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of the claimant or other affiant; *provided*, that when the affidavit is made by any other person than the claimant the reasons why it is not made by the claimant shall be set forth in the affidavit. The oath may be taken before any officer authorized to administer

oaths. The amount of interest shall be computed and included in the statement of the claim and the rate of interest determined. The court may in its discretion for good cause shown allow a defective affidavit to be corrected or amended on application made at any time before the filing of the final account. *As amended, Stats. 1899, 111.*

Claim of Judge or Executor.

2895. SEC. 110. Any District Judge may file a claim against the estate of any deceased person, and have the same rights and remedies in reference thereto as any other creditor filing a claim. Any executor or administrator may file a claim against the estate of any deceased person.

Executor to Examine All Claims—When Deemed Rejected.

2896. SEC. 111. Within fifteen days after the time for filing claims has expired, as hereinbefore provided, the executor or administrator shall examine all claims filed, and endorse on each claim his allowance or rejection with the day and the year thereof, and within five days after the fifteen days in this section first specified, the executor or administrator shall present all claims allowed by him to the District Judge for his approval or rejection. If an executor or administrator refuse or neglect to endorse on a claim his allowance or rejection within fifteen days, as above specified, the claim shall be deemed rejected, but the executor or administrator may nevertheless allow said claim at any time before the filing of the final account. All claims, when approved by the Judge, shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded upon a bond, bill, note or other instrument the original instrument need not be filed, but a copy with all endorsements may be attached to the statement of the claim and filed therewith,

and if the claim be secured by mortgage or other evidence of lien, it shall, or a certified copy from a record, be attached to the claim and filed therewith. *As amended, Stats. 1899, 111.*

Rejected Claim, Holder May Bring Suit—Non-Resident.

2897. SEC. 112. When a claim is rejected by the executor or administrator, or the District Judge, the holder shall be immediately notified by the executor or administrator, and such holder must bring suit in the proper court against the executor or administrator within thirty days after such notice, whether the claim is due or not, otherwise the claim shall be forever barred. If the holder of a claim resides out of the state he may be informed of the rejection of his claim by written notice forwarded to his postoffice address by registered mail. *As amended, Stats. 1899, 112.*

Kennedy v. Estate of Keating, 24 Nev.

Claim Barred.

2898. SEC. 113. No claim shall be allowed by the executor or administrator or the District Judge which is barred by the statute of limitations at the time of the death of the person whose estate is being administered.

Before Suit.

2899. SEC. 114. No holder of any claim against an estate shall maintain any action thereon unless it shall have been first filed, and under the conditions hereinbefore specified.

Not in Limitation.

2900. SEC. 115. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed.

Chose in Action.

2901. SEC. 116. If an action be pending against the deceased at the time of his or her death, the plaintiff, in like manner, shall file his claim with the Clerk, and no recovery shall be had in the action unless proof be made of such filing.

Allowance in Part.

2902. SEC. 117. Whenever the executor or administrator or the District Judge shall act upon any claim that may be filed, he shall indorse on the claim the amount he is willing to allow, and should the creditor refuse to accept the amount allowed in satisfaction of his claim he shall recover no costs in any action which he may bring on such claim against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

Effect of Judgment.

2903. SEC. 118. The effect of any judgment rendered against any executor or administrator upon any claim for money against the estate of his testator or intestate, shall only be to establish the claim in the same manner as if it had been allowed by the executor or administrator and the District Judge, and the judgment shall be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified copy of the judgment shall be filed in the estate proceedings. No execution shall issue upon such judgment nor shall it create any lien upon the property of the estate or give the judgment creditor any priority of payment.

Judgment Before Death.

2904. SEC. 119. When any judgment has been rendered against the deceased in his or her lifetime no execution shall issue thereon after his or her death; but a certified copy of such judgment shall be attached to the statement of claim filed with the Clerk and shall be acted on as any other claim; *provided, however*, that if an execution has been actually levied upon any property of the deceased the same may be sold for the satisfaction thereof and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Liable for Costs.

2905. SEC. 120. When a judgment has been recovered with costs against any executor or administrator the executor or administrator shall be personally liable for the costs, but they shall be allowed him in his administration accounts unless it shall appear that the suit or proceeding in which the costs were taxed shall have been prosecuted or resisted without just cause.

Claim of Executor.

2906. SEC. 121. If an executor or administrator is himself a creditor of the deceased, he shall as any other creditor file his claim with the Clerk, and the District Judge shall allow or reject it, and its allowance by the Judge shall be sufficient evidence of its correctness.

Notice to Creditors.

2907. SEC. 122. If any executor or administrator shall neglect for fifteen days after his appointment to give notice of his appointment, as hereinbefore prescribed, it shall be the duty of the court to revoke his letters.

Statement of Claims.

2908. SEC. 123. Within ten days after the expiration of the time for the Judge to approve or reject claims, the executor or administrator shall file a statement of all claims filed against the estate, and at any other time the court may order. In all such statements he shall designate the names of the creditors, the character of each claim, when it became or will become due, and whether allowed or rejected.

Sale, When Not Valid.

2909. SEC. 124. No sale of any property of an estate of a deceased person shall be valid unless made under an order of the district court, except as otherwise provided in this Act or other Acts.

Application for Order.

2910. SEC. 125. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file written objections, which shall be heard and determined.

Sale of Perishable Property.

2911. SEC. 126. At any time after receiving letters-the executor, administrator or special administrator may apply to the court or Judge for an order to sell the perishable property of the estate, or so much of other property, if necessary, to pay the allowance made to the family of deceased. If there be a delay in obtaining such order, such property may be sold without an order of sale; *provided*, that the executor, administrator or special administrator shall be held responsible for the property sold by him, unless, after making a sworn return, the court shall confirm the sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor or administrator may also apply for an order to sell so much of the personal property as may be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting or publishing, as the court or Judge may order. A similar application may be made from time to time to the court or Judge at chambers as long as any personal property remains in his hands, and a sale thereof is necessary; and if he deem it for the best interest of the estate, he may at any time after the filing of the inventory make a like application, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate; and if on the hearing it shall be made to appear that a sale is necessary, or for the best interest of the estate, the court or Judge shall order it to be made. In making such sales the court or Judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially

bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal property has been applied to the payment of the debts and expenses of administration.

Sale of Personal Property, How Made.

2912. SEC. 127. The sale of personal property shall be made at public auction, and after public notice given at least ten days, unless for good reasons shown, the court or Judge shall order a private sale or a shorter notice. Public sales of such property shall be made at the court house door, at the residence of the deceased, or at some other place to be mentioned in the notice, and no sale shall be made of any property which is not present at the time of selling.

Notice, How Given.

2913. SEC. 128. The notice shall specify the time and place, and shall be given by posting in three public places of the county, or by publication in a newspaper, as the court or Judge shall order.

Real Estate Sold, When.

2914. SEC. 129. When the personal estate of the deceased shall be insufficient to pay the allowance to the family, the debts of the deceased, expenses of last illness and funeral, and the charges and cost of administration, the executor or administrator may petition to have the real estate sold for such purpose.

Application for Order to Sell.

2915. SEC. 130. Such petition shall be presented to the district court or the Judge at chambers, setting forth the amount of personal estate that has come to the hands of the petitioner, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, as far as the same can be ascertained or estimated; the amount due upon the family allowance or that will be due after the same shall have been in force for one year; the sum, if any, due for last sickness and funeral of deceased; the costs and expenses of the administration already accrued and an estimate of what will or may accrue during the administration; a description of all the real estate of which the deceased died seized, or in which he or she had any interest or in which the estate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community or separate property; the names, ages and residence of the devisees or legatees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of petitioner. If all of said matter cannot be ascertained it shall be so stated in the petition.

Order to Show Cause.

2916. SEC. 131. If it shall appear to the court or Judge by such petition that it is necessary to sell the whole or some part of the real estate for the purposes therein mentioned, or any one of them, such petition shall be filed, and an order thereupon made directing the Clerk to issue a notice to all persons interested in the estate to be and appear before the court at a time and place specified, not less than three weeks nor more than six weeks from the date of such notice, to show cause why an order should not be granted to authorize the executor or administrator to sell so much of the real estate as may be necessary.

Notice, How Served.

2917. SEC. 132. A copy of such notice shall be personally served on all persons in the county interested in the estate at least five days before the time specified in the notice, or shall be published at least two successive weeks in such newspaper as the court or Judge shall order; *provided, however*, if all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Hearing of Application.

2918. SEC. 133. The district court, at the time and place specified in such notice, or at such other time as the hearing may be adjourned to, upon satisfac-

tory proof of the due service or publication of the notice, by affidavit or otherwise, shall proceed to the hearing of the petition and any opposition that may be filed.

Attorney Appointed.

2919. SEC. 134. If any of the legatees, devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the notice shall be served upon such guardian. If they have no guardian, the court or Judge shall, at the time of filing said petition, or before proceeding to act upon it, appoint some disinterested person their attorney, for the purpose of appearing for them in the proceeding, and taking care of their interests. The court or Judge may also, if deemed necessary, appoint such attorney for the heirs, devisees or legatees, if they are unrepresented, whether minors or otherwise, and may likewise appoint an attorney for the creditors if unrepresented.

Witness Examined.

2920. SEC. 135. The executor or administrator may be examined and witnesses on the part of any party interested, and process to compel their attendance and testimony may issue in the same manner and with like effect as in other cases.

Order of Sale of Part.

2921. SEC. 136. If it shall appear to the court that it is necessary to sell a part of the estate, real or personal, and that by a sale of such part the residue of the estate, or some specific part or piece thereof would be greatly injured or diminished or subject to expense, or rendered unprofitable, the court may authorize the sale of the whole estate, or such part as may be judged necessary and most beneficial for the interests of all concerned.

Order to Specify, What—Sale, How Made.

2922. SEC. 137. The order shall specify the lands to be sold and the terms of the sale, which may be either for cash or on a credit not exceeding one year, payable in gross or installments with interest as the court may direct. If sold on a credit the purchaser shall give his promissory note with security for deferred payments, which shall also be a lien upon any real estate sold. The tract or tracts of land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to said estate, unless the court shall otherwise specially direct. If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court shall order that part descending to the heirs to be sold before that devised. Every such sale shall be made at public auction unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of the real estate at private sale, in which case the court may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as may be made to appear most beneficial to the estate. If the executor or administrator shall neglect or refuse to make a sale under the order of sale he may be compelled to proceed to sell by order of the court made on motion after due notice by any party interested.

Person Other Than Executor May Apply for Order of Sale.

2923. SEC. 137. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may petition therefor in the same manner as the executor or administrator, and like proceedings shall be had thereon, the notice being also served upon the executor or administrator.

Certified Copy of Order.

2924. SEC. 138. Upon making an order of sale, under the provisions of the preceding section, a certified copy of such order shall be delivered by the Clerk

to the executor or administrator, who shall thereupon be authorized and required to sell the real estate as directed.

Notice of Time and Place of Sale.

2925. SEC. 139. When a sale is ordered, notice of the time and place of holding the same shall be given by posting a copy in three of the most public places of the county in which the land is situated, and by publishing it in a newspaper published in the county, if there be one; if not, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements shall be described with common certainty.

Sale to Be Made, Where—Private Sale.

2926. SEC. 140. Such sale shall be made in the county where the land is situated, but when the tract of land is situated in two or more counties, it may be sold in any one of such counties. The sale shall be made between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of the same day, at public auction or private sale, as the court may have ordered, but the same shall not be sold at private sale, unless the real estate to be sold has been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for less than two-thirds of its appraised value. If such real estate has not been so appraised, the court shall appoint three disinterested real estate holders to appraise the same, who shall return their said appraisement under oath to the court before the sale shall be made.

Sale Vacated, When.

2927. SEC. 141. The executor or administrator making any sale of any real estate shall within five days thereafter make and file with the Clerk a return of his proceedings, whereupon the Clerk shall give notice by posting in three public places of the county that the return has been filed and will be heard by the court at a time and place to be designated in said notice, not less than ten days after such posting, and notify all interested to appear and show cause why said sale should not be confirmed. At the time set, or at such other times as the hearing may be continued to, the court shall hear the matter and if it shall appear that the proceedings were unfair, or that the sum bid is disproportional to the value, and that a sum exceeding such bid at least ten per cent exclusive of the expense of a new sale may be obtained, the court shall vacate such sale and direct a new sale to be made, and the proceedings thereon shall be as upon an original order to sell; *provided*, that if an offer of ten per cent or more exclusive of the expense of a new sale shall be made in writing by a responsible person, to the court or Judge, it shall be discretionary with the court to accept such offer and confirm the sale to such person or to order a new sale.

Order Confirming Sale.

2928. SEC. 142. If upon the hearing, when all persons interested who desire have been heard for or against, and any testimony that may be offered, it shall appear to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, or if disproportionate that a greater sum as above specified cannot be obtained, or that the advance bid mentioned in section 141 of this Act be made and accepted, the court shall confirm the sale and direct proper conveyances to be made and executed, and such sale from that time shall be confirmed and valid; *provided*, that if after such confirmation the purchaser shall neglect or refuse to comply with [the] terms of sale the court may, on motion of the executor or administrator, and after notice to the purchasers, order a new sale of the property, and if the amount realized on such sale does not cover the bid and expenses of the previous sale, such delinquent purchaser shall be liable for the deficiency.

Conveyances Pass, What.

2929. SEC. 143. Proper conveyances shall thereupon be executed to the pur-

chasers by the executor or administrator. The conveyances so made shall be deemed to convey all the right, title, interest and estate of the deceased in the premises at the time of his or her death. When, however, by operation of law or otherwise the estate shall have acquired any right, title or interest in the premises other than or in addition to that of the deceased at the time of his or her death, such right, title or interest shall also be passed by such conveyances.

Before Confirmation.

2930. SEC. 144. Before any order is entered confirming the sale it shall be proved to the satisfaction of the court that notice of the sale was given as in this Act prescribed, and the order of confirmation shall state that such proof was made.

Postponement of Sale.

2931. SEC. 145. If at the time appointed for the sale the executor or administrator shall deem it best for the interest of all parties concerned therein that the same should be postponed, he may adjourn the sale from time to time, not exceeding in all sixty days.

Adjournment, Notice Of.

2932. SEC. 146. In case of adjournment notice thereof shall be given by a public declaration at the time and place first appointed for the sale, and if the adjournment be for more than one day, further notice shall be given by posting in three public places in the county where the land is situated, or publishing the same, or both, as time and circumstances will admit.

Sale to Pay Legacies.

2933. SEC. 147. When the testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay a legacy together with his debts and the charges and expenses of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as hereinbefore provided in case of a sale for the payment of debts.

Payment According to Will.

2934. SEC. 148. If a deceased person shall have made provision by will, designating the estate to be appropriated for the payment of debts, expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Order Not Required, When.

2935. SEC. 149. When such provision has been made, or any property directed by will be sold for any purpose, the executor or the administrator, with the will annexed, may proceed to sell, as directed by the will, without an order of the district court, but he shall be bound to give notice of the sale, and proceed in all respects as if acting under an order of sale from the court. Such sale shall not be valid until confirmed by the court.

When Property Insufficient.

2936. SEC. 150. If the provisions made by the will, or the estate appropriated be not sufficient to pay the debts, expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated to that purpose as provided in this Act.

Divided Estate Liable for Debts.

2937. SEC. 151. The estate, real and personal, given by will to any devisees or legatees, shall be held liable for the payment of debts, expenses of administration and family expenses in proportion to the value or amount of the several devises or legacies, except that specific devises or legacies may be exempted, if it

shall appear to the court necessary to carry into effect the intention of the deceased, if there shall be other sufficient estate.

Contribution.

2938. SEC. 152. When the estate given by any will has been sold for the payment of debts and expenses all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised or bequeathed to him or her may have been taken for the payment of debts or expenses, and the district court, when distribution is made, shall settle the amount of the several liabilities, and decree how much each person shall contribute.

Contract for Lands May Be Sold.

2939. SEC. 153. If a deceased person, at the time of death, was possessed of a contract for the purchase of lands, the interest of deceased in such lands, and under such contract, may be sold in the same manner as if said person had died seized of such land, and the same proceedings shall be had for that purpose as are prescribed in this Act in respect to lands of which a person dies seized, except as hereinafter provided.

Sale, How Made.

2940. SEC. 154. Such sale shall be made subject to all payments that may thereafter become due on such contract, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the district court until the purchaser or purchasers shall execute a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the person or persons entitled to the interest of deceased in the land so contracted for. The amount of such bond shall be double the whole amount of payments thereafter to become due on such contract, with such sureties as the district court or Judge shall approve.

Bond, How Conditioned.

2941. SEC. 155. Such bond shall be conditioned that the purchaser or purchasers will make all payments for such lands, that shall become due after the date of such sale, and will indemnify the executor or administrator, and the person or persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract, but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser or purchasers.

Assignment of Contract.

2942. SEC. 156. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser or purchasers an assignment of the contract, which assignment shall vest in the purchaser or purchasers all the right, title and interest of the person or persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser or purchasers shall have the same rights and remedies against the vendor of such lands as the deceased would have if living.

Subject to Mortgage.

2943. SEC. 157. When any sale is made by any executor or administrator, pursuant to the provisions of this Act, of land subject to any mortgage or other lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the satisfaction of the mortgage or other lien and the residue in due course of administration. Such application of the purchase money shall be made without delay and the land shall remain subject to such mortgage or other lien until the purchase money shall have been actually so applied. No lien against any estate shall be affected by the statute of limitation pending the proceedings for the settlement of such estate.

Expenses of Sale.

2944. SEC. 158. In all cases in which lands are sold by an executor or administrator the necessary expenses of the sale shall first be paid out of the proceeds.

Misconduct in Sale.

2945. SEC. 159. If there shall be any neglect or misconduct in the proceedings of an executor or administrator in relation to any sale by which any person interested in the estate shall suffer any damage, the party aggrieved may recover for the same in a suit upon the bond of the executor or administrator or otherwise, as the case may require.

Fraudulent Sale.

2946. SEC. 160. Any executor or administrator who shall fraudulently sell any real estate of his decedent contrary to the provisions of this Act shall be liable on his bond, in double the value of the land sold, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein.

Limitation of Action.

2947. SEC. 161. No action for the recovery of any estate sold by an executor or administrator under the provisions of this Act shall be maintained by any heir or other person claiming under the deceased unless it be commenced within three years next after the sale, saving to minors or others under any legal disability at the time when the right of action shall first accrue the right to commence such action at any time within three years after the removal of the disability.

Account of Sale.

2948. SEC. 162. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the district court a return of sale thereof within five days after making such sale. If he neglects to make such return he may be punished as for a contempt or his letters may be revoked, one day's notice having first been given him to appear and show cause why he should not be punished for a contempt or his letters should not be revoked, and his appearance may be compelled by attachment or other proper process.

Not to Purchase.

2949. SEC. 163. No executor or administrator shall directly or indirectly purchase any property of the estate he represents.

Executor to Take Possession.

2950. SEC. 164. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, except that exempted as hereinbefore provided, and shall collect all debts due the deceased. For the purpose of bringing suits to quiet title or for partition of such estate, the possession of the executor or administrator shall be deemed the possession of the heirs or devisees. Such possession of heirs or devisees shall be subject, however, to the possession of the executor or administrator for all other purposes.

May Sue and Be Sued.

2951. SEC. 165. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases where the same might have been maintained by or against their respective testators or intestates in their lifetime.

May Sue for Trespass.

2952. SEC. 166. Executors or administrators may maintain actions against any person or persons, who shall have wasted, destroyed, taken, carried away or

converted to his or their own use the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased while living.

May Sue for Waste.

2953. SEC. 167. Any person or his personal representatives shall have a right of action against the executor or administrator of any testator or intestate who in his lifetime shall have wasted, destroyed, taken, carried away or converted to his own use the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Surviving Partner.

2954. SEC. 168. When there was a partnership existing between the testator or intestate at the time of his death and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership, and to settle its business, but the interest of the deceased shall be included in the inventory, and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account to the executor or administrator, and pay over such balance as may from time to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator the District Judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the deceased could have maintained.

Action on Bond.

2955. SEC. 169. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor of any former administrator of the same estate.

Joinder of Parties.

2956. SEC. 170. In actions brought by or against executors, it shall not be necessary to join those as parties who have not qualified.

Debts Compromised.

2957. SEC. 171. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approval of the district court or Judge, may compromise with such debtor and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized in any case when it shall be made to appear to the court to be just and for the best interests of the estate.

Transfer to Defraud Recovery of Property.

2958. SEC. 172. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased, in his lifetime, shall have conveyed any real estate or any rights or interests therein with intent to defraud his creditors or to avoid any right debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty, to commence and prosecute to final judgment any proper action for the recovery of the same for the benefit of the creditors, and may also for such benefit sue for and recover all goods, chattels, rights or credits or their value, which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Executor Not Bound.

2959. SEC. 173. No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors, unless upon application of creditors of the deceased, nor unless such creditors

shall pay the costs and expense of such litigation, or give such security therefor as the court or Judge shall direct.

Disposition of, When Recovered.

2960. SEC. 174. All real estate so recovered shall be sold for the payment of debts in the same manner as hereinbefore prescribed for sales of real estate by executors or administrators, and the proceeds of all goods, chattels, rights or credits so received shall be applied in payment of debts in the same manner as other personal property in the hands of the executor or administrator.

Contract to Be Completed.

2961. SEC. 175. When any person who is bound by contract in writing to convey any real estate shall die before making the conveyance, the district court in a proper proceeding therefor may decree that the executor or administrator convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to make such conveyance. All persons interested in the estate shall be made parties defendant in such action.

Effect of Conveyance.

2962. SEC. 176. Every conveyance made in pursuance of a decree of the court as above provided, shall be as effectual to pass the estate contracted for as fully as if the contracting party himself were living and executed the conveyance himself.

Liable for Debts.

2963. SEC. 177. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the deceased out of his own estate, unless the agreement for that purpose or some memorandum or note thereof is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

With What Chargeable.

2964. SEC. 178. Every executor and administrator shall be chargeable in his account with the whole of the estate of the deceased which should come to his possession at the value of the appraisement contained in the inventory, except as hereinafter provided, and with all the interest, profit and income of the estate.

Not to Profit or Lose By.

2965. SEC. 179. He shall not make profit by the increase nor suffer loss by the decrease or destruction of any part of the estate without his fault. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any be sold for less than the appraisement he shall not be responsible for the loss if the sale has been justly made.

Uncollected Debts.

2966. SEC. 180. No executor or administrator shall be accountable for any debts due the deceased that remain uncollected without his fault.

Expenses and Compensation.

2967. SEC. 181. He shall be allowed all necessary expenses in the care and management as well as settlement of the estate, and for his services such fees as provided by law; but when the deceased shall, by his will, make some other provision for the compensation of his executor, this shall be deemed a full compensation for such services, unless the executor files a renunciation, in writing, of all claim for the compensation provided by the will.

PROPER EXPENSES—COUNSEL FEES. An executor may employ counsel to attend to the litigation concerning the estate. But he has no right to employ counsel at the expense of the estate to keep the accounts and do that business for which he is compensated by his fees. *Lucich v. Medin*, 3 Nev. 93.

Not to Purchase Claims.

2968. SEC. 182. No administrator or executor shall purchase any claim against the estate he represents; and if he shall pay any claim for less than its nominal value he shall not charge in his account more than he has actually paid.

PURCHASE OF CLAIM BY ADMINISTRATOR—WHEN ADMINISTRATOR CAN MAINTAIN ACTION AGAINST ESTATE. *Furth v. Wyatt*, 17 Nev. 180.

Commissions.

2969. SEC. 183. When no compensation shall have been provided by the will, or the executor shall renounce all claims thereto, he shall be allowed commissions upon the whole amount of the personal estate accounted for by him, as follows: For the first thousand dollars, at the rate of six per cent; for all above that sum and not exceeding five thousand dollars, at the rate of four per cent; for all above five thousand dollars, at the rate of two per cent, and the same commissions shall be allowed to administrators. In all cases such additional allowance may be made by the court for services in regard to the real estate, when it shall be made to appear that the same is just and reasonable.

First Account Rendered.

2970. SEC. 184. Within thirty days after the Judge has acted upon the claims filed against the estate, the executor or administrator shall file his first account, under oath, of his administration. Such account shall be itemized, showing the amount of money received and expended by him; the amount of all claims filed against the estate; the names of all claimants; the claims, if any, rejected, and all other matters necessary to show the conditions of the affairs of the estate.

Full Account and Report.

2971. SEC. 185. Every executor or administrator shall render and file under oath, a full account and report of his administration whenever he deems it advisable, or shall be directed to do so by the court on its own motion, or on motion on behalf of any person interested, when it shall appear to the court to be proper.

1. EXPENSES OF ADMINISTRATION. *In Re Nicholson*, 1 Nev. 518.

ATTORNEYS' FEES—INSURANCE. *Id.*

2. CHARGES FOR REPAIRS—EXPENSE OF CONTESTS—Funeral Expenses—Expense of Last Sickness. *Estate of Millenovich*, 5 Nev. 161.

Citation to Appear on Failure to Render Account.

2972. SEC. 186. If the executor or administrator fail to render and file his first account within the time specified in section 184, above, it shall be the duty of the court or Judge to order a citation to issue requiring him to file such account by a time to be stated in said citation as fixed by the court or Judge, or appear and show cause why he should not be compelled to file said account. If he fail to file said account by the time stated, or show cause why he should not, the court by attachment or other proper process may compel him to file such an account or may revoke his letters in the discretion of the court, and like action may be had in reference to any subsequent account he may be ordered to file.

Clerk to Give Notice by Posting.

2973. SEC. 187. When any account shall be filed by an executor or administrator with the Clerk, he shall give notice thereof by posting in three public places of the county, and notifying all persons interested in the estate, at a time and place, not less than ten days after the posting, to be stated in the notice, to appear and show cause why the account should not be approved and allowed and confirmed. *As amended, Stats. 1899, 112.*

Who May Contest.

2974. SEC. 188. Any person interested in an estate may contest any account or any item therein of the executor or administrator, by filing in writing with the

Clerk, at any time before the hearing on approving the account, his objection. At the time fixed in the notice, or at such further time as the court may order, the court shall proceed to hear the matter, when the executor or administrator, or any other person, may be sworn and examined by either party, and the matter shall be adjudged by the court as law and right demand.

Vouchers to Be Produced.

2975. SEC. 189. In rendering his account the executor or administrator shall produce vouchers for all payments he may have made, which vouchers shall be filed and remain in court, and he may be examined on oath touching such payments, and also touching any property and effects of the deceased and the disposition thereof. When any such voucher shall be required for other purposes it may be withdrawn on leaving a certified copy on file. If any vouchers be lost, or for other good reason cannot be produced on settlement of an account, the payment may be proved by the oath of one competent witness.

Minors, Guardians For.

2976. SEC. 190. If there be a minor interested in the estate who has no legally appointed guardian, the court shall appoint some disinterested attorney to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it. The court may also appoint an attorney to represent absent heirs and devisees or legatees. All matters, including allowed claims not passed upon on the settlement of any former account, or on making a decree of sale, may be contested by heirs for cause shown.

Settlement Conclusive.

2977. SEC. 191. The settlement of an account and the allowance thereof by the court shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease, and in any action brought by any such person the settlement and allowance of the account shall be presumptive evidence of its correctness.

Proof of Notice.

2978. SEC. 192. No account shall be allowed by the court until it be first proved that the notice hereinbefore required has been given, and the order or decree shall show that such proof was made to the satisfaction of the court and shall be conclusive evidence of the fact.

After Authority Ceases.

2979. SEC. 193. Whenever the authority of an executor or administrator shall cease or shall be revoked for any reason, he may be cited by the court to account, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been by any person interested in the estate, during the time he was executor or administrator.

Failure to Account.

2980. SEC. 194. If the executor or administrator resides out of the county, or absconds or conceals himself so that the citation cannot be personally served, and shall neglect to file an account within twenty days after the time fixed for that purpose, his letters shall be revoked.

Debts, Order of Payment.

2981. SEC. 195. The debts of the estate shall be paid in the following order: First—Funeral expenses. Second—The expenses of the last sickness. Third—Debts having preference by the laws of the United States. Fourth—Judgments rendered against the deceased in his lifetime, and mortgages in order of their date. Fifth—All other demands against the estate.

Preference to Mortgages.

2982. SEC. 196. The preference given in the preceding section to a mortgage shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage the part remaining unsatisfied shall be classed with other demands against the estate.

Dividends.

2983. SEC. 197. If the estate be insufficient to pay all the debts of any one class, each creditor of such class shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all of those of the preceding class have been fully paid.

Funeral Expenses.

2984. SEC. 198. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands to pay the funeral expenses, the expenses of the last sickness, and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt or any legacy until the payment shall have been ordered by the court.

Order for Payment to Creditors.

2985. SEC. 199. Upon the settlement of any account of an executor or administrator as in this Act provided, the court may make an order for the payment of debts as the condition of the estate will warrant. If there shall not be sufficient funds in the hands of the executor or administrator to pay the debts in full, the court shall specify in the decree the sum to be paid to each creditor. If the whole estate should be exhausted by such payments, such account as is then before the court shall be the final account, and the executor or administrator shall be entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been made and that he has fully complied with the decree of the court.

Claims Disputed or Not Due.

2986. SEC. 200. If there be any claim not due or any contingent or disputed claim against the estate, the amount thereof or such part of the same as the holder would be entitled to if the claim were due, or established or absolute, shall be paid into court, where it shall remain to be paid over to the party when he shall become entitled thereto, or, if he fail to establish the claim, to be paid over or distributed, as the circumstances of the estate require; *provided*, that if any creditor whose claim has been allowed, but is not yet due, shall appear and consent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Liabie After Decree.

2987. SEC. 201. Whenever a decree shall be made by the court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for the amount of his claim, or the dividend thereon, and execution may be issued upon such decree as upon a judgment in any other action, in favor of each creditor, and the same proceedings may be had under such execution as if it had been issued upon a judgment. The executor or administrator shall also be liable on his bond to each creditor.

Payment of Legacies.

2988. SEC. 202. When the whole of the debt and liabilities of an estate have been paid, the court shall proceed to direct the payment of legacies and the distribution of the estate among those entitled, as hereinafter provided; *provided*,

the estate is in condition to be closed; if not, then at such time as it thereafter may be in condition.

DUTY OF ADMINISTRATORS. Administrators should be held to the utmost good faith and strict performance of official duty. They are, however, mere creatures of the statute, and are only bound to perform such duties as are imposed upon them by the law. *Royce v. Hampton*, 16 Nev. 25.

Final Account.

2989. SEC. 203. Whenever all the property of an estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator shall render and file his final account and pray a settlement of his administration.

DUTIES OF ADMINISTRATORS—CARE AND DILIGENCE. Whenever an administrator does what the law prohibits, or fails to exercise reasonable care and diligence in the endeavor to do what the law enjoins, he and his sureties are liable for the damages consequent upon such act or omission. *McNabb v. Wixom*, 7 Nev. 163.

NEGLECT BY ADMINISTRATOR TO PAY OVER—LIABILITY FOR SUBSEQUENT LOSS. If an administrator deposits money of an estate in a bank, and allows it to remain after the time when, if he had fulfilled his duty, it would have been distributed and in the hands of those entitled to it; and the bank fails and the money is lost, he and his sureties are liable therefor. *Id.*

MEASURE OF DAMAGES FOR LOSS BY NEGLECT OF ADMINISTRATOR. Where money of an estate is lost by reason of such neglect of an administrator as he and his sureties are liable for, the sum lost constitutes the measure of damages. *Id.*

TIME WITHIN WHICH ADMINISTRATORS TO ACCOUNT AND SETTLE. *Id.*

Neglect to Render Final Account.

2990. SEC. 204. If he neglects to render and file his final account the same proceedings may be had as prescribed in this Act in regard to the first account to be filed by him, and all the provisions relative to said first account, and the notice and settlement thereof, shall apply to his account for final settlement.

Distribution, When Made.

2991. SEC. 205. When the accounts of an executor or administrator have been settled and a decree for the distribution of the estate made by the court, the executor or administrator shall without any unnecessary delay distribute the estate remaining in his hands as by the decree directed.

Accounts Confirmed, When.

2992. SEC. 206. At the time any account comes before the court for allowance, if there are no exceptions filed by any person interested in the estate, and the account is made to appear to the court to be correct and according to law, the court may allow and confirm the account.

Petition of Heirs.

2993. SEC. 207. At any time after the lapse of three months after the issuing of letters testamentary or of administration, any heir, devisee or legatee may present his petition to the court, praying that the legacy or share of the estate to which he or she is entitled may be given to him or her upon giving bond, with approved security, for the payment of his or her proportion of the debts of the estate.

Estate of Foley, 24 Nev.

Notice Of.

2994. SEC. 208. Notice of the application shall be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of an account of an executor or administrator, or [as] the court may direct.

Who May Resist.

2995. SEC. 209. The executor or administrator, or any person interested in

the estate, may appear and resist the application, or any other heir, devisee or legatee may make a similar application for himself or herself.

Decree of Distribution.

2996. SEC. 210. If, on the hearing, it appears that the estate is but little indebted, and that the share or shares of the party or parties petitioning may be allowed, without injury to the creditors of the estate, the court shall make a decree in conformity to the prayer of the applicant or applicants; *provided*, that each one of them shall first execute and deliver to the executor or administrator a bond in such sum as shall be designated by the court or Judge, and with sureties to be approved by the Judge. Such bond shall be made payable to the executor or administrator and conditioned for the payment by the heir, devisee or legatee whenever required of his or her proportion of the debts of the estate.

Decree, What May Direct.

2997. SEC. 211. Such decree may direct the executor or administrator to deliver to the petitioner or petitioners the whole portion of the estate to which he, she or they may be entitled, or a part only thereof.

Partition.

2998. SEC. 212. If in the execution of such decree any partition be necessary between two or more of the parties, it shall be made in the manner herein-after prescribed.

Cost of Proceedings.

2999. SEC. 213. The costs of such proceedings shall be paid by the applicant, or if there be more than one, shall be apportioned equally amongst them.

Payment of Bond Given.

3000. SEC. 214. Whenever any bond has been executed and delivered as above prescribed, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and cause a citation to be issued and served upon the party bound, requiring him or her, at a time and place, not more than ten days after the date of the citation, to be stated therein, to appear and show cause why the order shall not be made. At the hearing the court, if satisfied of the necessity for such payment to be made, shall make an order accordingly, designating the amount and giving a time in which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Petition for Distribution, When Made.

3001. SEC. 215. When an executor or administrator files his final account, with a petition praying for the allowance and confirmation thereof, he may also include in such petition a prayer for the distribution of the estate, and upon the settlement and allowance of the final account the court may also decree a distribution of the residue of the estate, if any, among the persons who are by law entitled. If a final account be settled and allowed without a decree of distribution the executor or administrator, or any heir, devisee or legatee, or assignee or grantee of any heir, devisee or grantee, at any time thereafter, may petition the court for a decree distributing the estate. A statement of the receipts and disbursements of the executor or administrator since the rendition of his final account shall be reported and filed before or at the time of making such distribution, unless distribution of real estate only be made, and a settlement thereof, together with an estimate of the expense of closing the estate, shall be made by the court, and shall be included in the decree, or the court or Judge may order notice of the settlement of such supplementary account.

Form of Decree.

3002. SEC. 216. In the decree the court shall name the persons and the pro-

portion or parts to which each shall be entitled, and such person shall have the right to demand and recover his or her respective share from the executor or administrator or any other person having the same in possession.

Petition for Distribution.

3003. SEC. 217. When a petition for distribution shall be filed, notice of the hearing of said petition shall be personally served, at the time of the filing of the final account or subsequently thereto, on all personally interested in the estate at least five days before the time specified in the notice, or shall be given by publication for at least three successive weeks in such newspaper as the court or Judge shall order, and the court may order such further notice as it may deem proper. *As amended, Stats. 1899, 112.*

Estates in Common.

3004. SEC. 218. When the estate, real or personal, assigned to two or more heirs, devisees or legatees shall be in common and undivided and the respective shares cannot be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition thereof may be made as hereinafter provided.

Petition, Who May File—Citation Shall Specify.

3005. SEC. 219. To secure such petition any person interested may file a petition stating the necessary facts, particularly describing the property to be partitioned and the party or parties interested in such property. Upon filing such petition a citation shall issue to all persons interested who shall reside in this state, or their guardians, and to agents, attorneys or guardians, if there be any in this state, or such as reside out of this state, to appear and show cause why a decree of partition should not be made as prayed for. The citation shall specify the estate and the party petitioning for partition, also the time and place for hearing the petition, not more than twenty days from its date, and must be served five days before the hearing at the time specified in the citation or at such further time as the court may continue the hearing. Upon proof, to the satisfaction of the court, that the citation has been properly served as above required, the court shall proceed to hear the petition and the allegation and proofs of the respective parties, and decree accordingly.

Petition May Be Filed, When—Partition, When Ordered.

3006. SEC. 220. A petition for partition may be filed at any time before the decree of distribution; and attorneys, guardians and agents appointed and the citation issued, and the petition heard and determined as above provided, in which case the commissioners hereinafter provided for to make partition shall not be appointed until the decree has been made assigning the estate, when the court, having assigned the estate, may appoint commissioners to partition it as hereinafter provided. But when application is made solely to have partition between the estate administered upon and any other parties, such application may be heard and determined, and partition ordered at any time the court may direct.

Commissioners Appointed.

3007. SEC. 221. When the property to be partitioned is entirely personal property the court or Judge shall appoint three competent, disinterested persons as commissioners for that purpose, who shall be duly sworn by any officer authorized to administer oaths, to faithfully and impartially discharge their duties. A certified copy of the order appointing them, attached to a certified copy of the decree assigning and distributing the estate, shall be given to them as their warrant, and their oath must be endorsed thereon. When the property to be divided is real estate, or partly real and partly personal, one of the three commissioners shall be a practical surveyor. Upon consent of the parties, and when the court shall deem it proper and just, the court may appoint one commissioner only,

who shall have the same authority and be governed by the same rules as if three were appointed.

When Real Estate Is in Different Counties.

3008. SEC. 222. If the real estate to be partitioned shall be in different counties, the court or Judge, if deemed proper, may appoint commissioners for each county, and in such case the estate in each county shall be divided separately, as if there were no other estate to be partitioned; but the commissioners first appointed shall, unless otherwise directed by the court, make division of the real estate, wherever situated in this state.

When Heirs Part With Interest.

3009. SEC. 223. Partition may be made as provided herein, although some of the original heirs, devisees or legatees may have assigned or conveyed their shares to other persons, and such shares shall be partitioned to the person holding the same, in the same manner as they would have been to the heirs, devisees or legatees, had they not transferred their shares.

Shares, How Set Out.

3010. SEC. 224. The several shares in the real and personal estate shall be set out to each individual in proportion to his or her right, and the real estate by metes and bounds, or such description that the same can be easily distinguished. If two or more of the parties request to have their shares set out so as to be held in common and undivided, such shares may be so partitioned.

May Be Assigned to One, When.

3011. SEC. 225. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to shares therein, who will accept and pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party or parties, to the satisfaction of the guardian of such minor or minors, and the true value of the estate shall be ascertained and reported by the commissioners or appraisers appointed specially for that purpose.

Payment for Equalizing.

3012. SEC. 226. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided and cannot be divided without injury to the same, it may be set off by the commissioners to any one of the parties, who will accept it and pay, or secure to be paid, to one or more of the others interested, such sum or sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same or secured to their satisfaction.

Estates Sold—Proceeds Divided.

3013. SEC. 227. When it cannot otherwise be fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold, and if the report be confirmed the court may order a sale by the executor or administrator or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted, reported upon and confirmed in the same manner and under the same rules as in ordinary cases of sales of land by an administrator under this Act.

Estates in Common, How Partitioned.

3014. SEC. 228. When partition of real estate among heirs, devisees, or legatees shall be required, and such real estate shall be in common and undivided with the real estate of any other person, the commissioner shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the court shall be binding upon all the

persons interested. The court may authorize the executor or administrator to bring suit for such partition when deemed necessary.

Shares of Equal Cash Value.

3015. SEC. 229. In making partition the commissioners shall always have regard to quantity and quality, and may set off quantity against quality, or quality against quantity, so that when the partition is made all the shares partitioned shall be of equal cash value, as near as possible.

Guardians Appointed.

3016. SEC. 230. Before any partition shall be made as provided herein guardians shall be appointed for all minor and insane persons interested in the estate to be divided, and an attorney shall be appointed for all non-resident or absent heirs or other persons interested. The commissioners shall notify all persons interested in the partition, their guardians, agents or attorneys, of the time when they will proceed to make partition, which time shall be as reasonable after their appointment as circumstances will admit or the court in the order of appointment may fix the time. The commissioners may take testimony, for which purpose any one of them may administer an oath, and they may take all necessary steps to enable them to form a correct judgment upon the matters before them.

Report of Commissioner.

3017. SEC. 231. The commissioners, when they shall have completed their work, within a reasonable time [shall] make a report of their proceedings and of the partition made by them, and file the same with the Clerk of the Court. Within fifteen days after the report is filed any person interested may file exceptions to the report, particularly specifying the grounds of objection. A copy of such objection shall be served upon the commissioners and all parties interested in the partition, their guardians, agents or attorneys in the county, before or at the time they are filed, with a notice to such persons that the objecting party will, at a certain time to be mentioned, not later than twenty days after the filing of said report, move the court to set aside the report, and for a new partition. At the time specified, or at such other time as the court may sit, the court shall proceed to hear the report and exceptions, and may hear proof by either party, and for sufficient reasons the court may set aside the report, and recommit the partition to the same commissioners, or appoint others, or may confirm the report. If no exceptions shall be filed to the report within the time above specified, the court, on the expiration of said fifteen days, or at any time thereafter, if the report appears [to] be just and correct and all the proceedings regular, shall confirm the report, and when such report shall be finally confirmed the decree of confirmation and the report shall be recorded by the Clerk, and the court shall order proper conveyance to be made by the respective parties to one another, or may, if for any reason necessary, appoint a commissioner to make such conveyance or conveyances which, when acknowledged or recorded, shall effectually pass the title.

Advancements Heard by Court.

3018. SEC. 232. All questions as to advancement made or alleged to have been made by the deceased to any heirs may be heard and determined by the court, and shall be specified in the decree distributing the estate, and in the warrant to the commissioners, and the final decree of the court shall be binding on all parties interested in the estate with right, however, of any party to appeal from a final decree of the court to the supreme court as in other action.

Agent for Absentees.

3019. SEC. 233. When any estate shall be distributed by the court or partitioned by commissioners as in this Act provided to any person residing out of this state, and having no agent therein, and it shall be necessary that some per-

son should be authorized to take charge and possession of the same for the benefit of such absent person, the court may appoint an agent for that purpose and authorize him to take charge of such estate.

Bond of Agent.

3020. SEC. 234. Such agent shall give a bond to the District Judge in such sum as the Judge shall fix, which bond shall be approved by the Judge and conditioned for the faithful management of, and accounting for the estate, before such agent shall be authorized to receive the same, and the court may allow a reasonable sum out of the profits of the estate for services and expenses of such agent.

Unclaimed Estates.

3021. SEC. 235. When the estate shall remain unclaimed in the hands of the agent for a year, it shall be sold under an order of the court, and the proceeds, deducting the expenses of the sale to be allowed by the court, shall be paid into the state treasury, for which the Treasurer shall receipt in duplicate to the agent, one of which the agent shall file in the office of the State Comptroller and the other in the estate matter in the district court.

Liability of Agent.

3022. SEC. 236. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding section, and may be sued thereon by the state or any person interested.

Certificate to Claimant.

3023. SEC. 237. When any person shall appear and claim the money paid into the treasury, the district court having ordered the sale, being first satisfied of his right, shall give him a certificate attested by the Clerk, under the seal of the court, and upon the presentation of the certificate to the State Comptroller shall draw his warrant on the Treasurer for the amount.

Decree of Discharge.

3024. SEC. 238. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up on the order of court all the property of the estate to the parties entitled, and has performed all acts lawfully required of him, the court shall make a decree discharging him and his sureties from all liability thereafter to be incurred.

Subsequent Letters May Issue.

3025. SEC. 239. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary or of administration should other property of the estate be discovered, or should it become necessary or proper from any cause that letters should again be issued.

Powers Suspended by Order of Court, When.

3026. SEC. 240. Whenever a District Judge has reason to believe from his own knowledge or from credible information that any executor or administrator has wasted, converted to his own use, or mismanaged, or is about to waste or convert to his own use, the property of the estate committed to his charge, or has committed or is about to commit any wrong or fraud upon the estate, or has become incompetent to act, or has permanently removed from the state, or has wrongfully neglected the estate, or has unreasonably delayed the performance of necessary acts in any particular as such executor or administrator, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor or administrator until the matter can be investigated.

When Special Administrator Appointed.

3027. SEC. 241. During the suspension of the powers of an executor or an

administrator, as provided in the preceding section, the district court, or Judge, if the condition of the estate requires it, may appoint a special administrator to take charge of the effects of the estate, who shall give bond and account as other special administrators are required to do.

Proceedings on Suspension.

3028. SEC. 242. When such suspension has been made the Clerk shall issue a citation, reciting the order of suspension, to the executor or administrator, to appear before the court at a time therein to be stated, as fixed by the court or Judge, to show cause why his letters should not be revoked, said citation to be served by the Sheriff, or other person, as provided in the Civil Practice Act for service of process. If he fail to appear in obedience to the citation, or appearing the court shall be satisfied that there exists good grounds for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

Who May Appear.

3029. SEC. 243. Any person interested may appear at the hearing and file allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the court.

Executor Absconding.

3030. SEC. 244. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the state, the citation may be served by leaving a copy at his last known place of abode and upon his attorney of record, when the court shall have jurisdiction to proceed as if the citation had been personally served.

To Compel Attendance.

3031. SEC. 245. In such proceedings for the removal of an executor or administrator the court may compel his attendance by attachment or other proper process and may require him to answer questions, on oath, touching his administration and upon his refusal so to do may commit him to jail until he obey, or may revoke his letters, or both.

Minutes of Proceedings to Be Kept.

3032. SEC. 246. The Clerk shall enter a minute of all proceedings in matters of estates, as in other actions, and also in the probate register. When publication is ordered such publication shall be made daily, or otherwise, as often as during the prescribed period as the paper is regularly issued, unless otherwise provided in this Act. The court or Judge, however, may prescribe a less number of publications during the period for publication, and the court or Judge may, for good cause shown, extend or shorten any of the times prescribed in this Act.

Personal Notice, How Given.

3033. SEC. 247. Whenever personal notice is required by this Act to be given to any party in the matter of an estate, and no other mode of giving notice is prescribed, it shall be given by citation, which shall be issued by the Clerk under the seal of the court, and directed to the Sheriff of the proper county, commanding such person to appear before the court or Judge, as the case may be, at a time and place to be named in the citation; also the nature or character of the proceeding shall be briefly stated in the body thereof.

Citation, How Served.

3034. SEC. 248. The officer to whom a citation is directed, unless otherwise provided herein, or the order of the court or Judge, shall serve the same by delivering a copy to the person therein named, or to each one of them, if there be more than one, and shall return the original to the court, according to its direction, indorsing thereon the time and manner of service.

Proofs of Serving Papers.

3035. SEC. 249. All proofs of publication or other mode or modes of giving notice or serving papers may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute prima facie evidence of such publication or service, as the case may be.

Citation, When Served.

3036. SEC. 250. When no other time is specially prescribed, citation shall be served at least two days before the return day.

Taking Testimony in Other Places.

3037. SEC. 251. For the purpose of taking the testimony of a witness or witnesses in other counties of this state, or in other states or territories, or foreign countries, a commission may be issued as in other cases, and, when issued ex parte no cross interrogatories shall be necessary.

Issues of Fact.

3038. SEC. 252. All issues of fact in matters of an estate shall be disposed of in the same manner as is by law provided upon the trial of issues of fact in a common law action. All questions of costs may be determined by the court, and execution may issue therefor in accordance with the order of the court.

Attorney for Minors.

3039. SEC. 253. When, upon any proceeding in an estate, an attorney has been appointed for minors or others interested in the estate, such attorney, until another may be appointed, shall represent the party or parties for whom he has been appointed in all subsequent proceedings.

Setting Aside Homestead.

3040. SEC. 254. When a decree is rendered setting apart a homestead, a certified copy of such decree shall be recorded in the County Recorder's office where the property is.

Appeal.

3041. SEC. 255. Any person interested in, affected by, and aggrieved at the decision and decree of the district court appointing an executor or administrator, revoking letters, allowing a final account, or disallowing it, decreeing a distribution or partition, order or decree, confirming or setting aside a report of commissioners, admitting or refusing a will for probate, and any other decision wherein the amount in controversy equals or exceeds, exclusive of costs, one thousand dollars, may appeal to the supreme court of the state, to be governed in all respects as an appeal from a final decision and judgment in action at law.

Power of Appellate Court.

3042. SEC. 256. Upon an appeal the appellate court may in its discretion reverse, affirm, or modify the judgment, order or decree appealed from, and as to any or all of the parties, and order a remittitur as in other cases, and may order costs to be paid by any party to the proceedings, or out of the estate as justice may require. Execution for costs may issue out of the district court.

Undertaking on Appeal Not Required.

3043. SEC. 257. An appeal by an executor or administrator as herein provided, who has given an official bond, shall be complete and effectual without an undertaking on appeal.

Executor Removed—Successor Appointed.

3044. SEC. 258. When an order or decree appointing an executor or administrator shall be reversed on appeal, all lawful acts in administration upon the estate performed by such executor or administrator, if he shall have qualified, shall be as valid as if such order or decree had been affirmed. When an executor or

administrator resigns or is removed, a successor may be appointed if a necessity therefor exists, without again proving the death and residence of the deceased.

Estate of Person Dying Intestate, How Distributed—When to Escheat to State.

3045. SEC. 259. When any person having title to any estate, not otherwise limited by marriage contracts, shall die intestate as to such estate, it shall descend and be distributed subject to the payment of his or her debts in the following manner:

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation.

Second—If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife and to the intestate's father, and if he or she shall leave no father, it shall go in equal shares to the surviving husband or wife and the intestate's mother. If he or she shall leave no issue or husband or wife, the estate shall go to his or her father, if living, if not, to his or her mother, if living.

Third—If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation.

Fourth—If the intestate shall have no issue, nor husband nor wife, nor father nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; *provided, however*, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation.

Fifth—If at the death of such child, who shall die under age and not having been married, all the other children of his said parent being also dead, and any of them shall have left issue, the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

Sixth—If the intestate shall leave no husband nor wife nor kindred, the estate shall escheat to the state for the support of the common schools. *As amended, Stats. 1899, 113.*

DISTRIBUTION OF ESTATES. Estate of Foley, 24 Nev.; Clark v. Clark, 17 Nev. 124.

Illegitimate Child.

3046. SEC. 260. Every illegitimate child shall be considered as an heir of the person who shall acknowledge himself to be the father of such child by signing in writing a declaration to that effect in the presence of one credible witness, who shall sign the declaration also as a witness, and shall in all cases be considered as heir of the mother, and shall inherit in whole or in part, as the case may be, in the same manner as if born in lawful wedlock. The issue of all marriages deemed null in law or dissolved by divorce shall be legitimate.

Heirs of Illegitimate Child.

3047. SEC. 261. If any illegitimate child shall die intestate without lawful issue and shall not have been acknowledged as above provided, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

Degrees of Kindred.

3048. SEC. 262. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise or gift from some one of his or her ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from the inheritance.

Advancement a Part of Estate.

3049. SEC. 263. Any estate, real or personal, that may have been given by the deceased in his or her lifetime as an advancement to any child or other lineal descendant shall be considered as part of the estate of the intestate, so far as regards the distribution and division thereof among his or her issue, and shall be taken by such child or other lineal descendant towards his or her share of the estate of the deceased.

When Advancement Exceeds Share.

3050. SEC. 264. If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further portion in the distribution and division of the estate, but he or she shall not be required to refund any part of such advancement; and if the amount so received shall be less than his or her share, he or she shall be entitled to as much more as will give him or her his or her full share of the estate of the deceased.

Gifts and Grants.

3051. SEC. 265. No gift or grant shall be deemed to have been made as an advancement unless so expressed in the gift or grant, or charged in writing by the deceased as an advancement, or acknowledged in writing by the child or other descendant to be such.

Value of Advancement.

3052. SEC. 266. If the value of the advancement shall be expressed in the conveyance, or in the charge thereof made by the deceased, or in the acknowledgment of the party receiving it, it shall be considered of that value in the distribution and division of the estate; otherwise it shall be estimated according to its value when given as nearly as the same can be ascertained.

Advancement in Case of Death of Recipient.

3053. SEC. 267. If any child, or other lineal descendant so advanced, shall die before the person making the advancement leaving issue, the advancement shall be taken into consideration in the distribution and division of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced in the like manner as if the advancement had been made directly to them.

Husband and Wife.

3054. SEC. 268. The provisions of this Act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.

Construction of Act—Compensation of Attorneys.

3055. SEC. 269. This Act shall be liberally construed, to the end that justice may be done all parties, and as speedy settlement of estates at the least expense secured; and all proceedings in matters of estate shall be proceedings of record as other actions and proceedings; and all attorneys for estates or executors or administrators or appointed in the proceedings shall be attorneys of record with

administrator resigns or is removed, a successor may be appointed if a necessity therefor exists, without again proving the death and residence of the deceased.

Estate of Person Dying Intestate, How Distributed—When to Escheat to State.

3045. SEC. 259. When any person having title to any estate, not otherwise limited by marriage contracts, shall die intestate as to such estate, it shall descend and be distributed subject to the payment of his or her debts in the following manner:

First—If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If there be a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife and the remainder in equal shares to his or her children, and to the lawful issue of any deceased child by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants, and if all of the said descendants are in the same degree of kindred to the intestate, they shall share equally, otherwise they shall take according to the right of representation.

Second—If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife and to the intestate's father, and if he or she shall leave no father, it shall go in equal shares to the surviving husband or wife and the intestate's mother. If he or she shall leave no issue or husband or wife, the estate shall go to his or her father, if living, if not, to his or her mother, if living.

Third—If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister by right of representation.

Fourth—If the intestate shall have no issue, nor husband nor wife, nor father nor mother, and no brother or sister living at his or her death, the estate shall go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those who claim through ancestors more remote; *provided, however*, if any person shall die leaving several children, or leaving one child and issue of one or more children, and any such surviving child shall die under age and not having been married, all the estate that came to such deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who may have died, by right of representation.

Fifth—If at the death of such child, who shall die under age and not having been married, all the other children of his said parent being also dead, and any of them shall have left issue, the estate that came to such child by inheritance from his or her said parent shall descend to all the issue of the other children of the same parent, and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

Sixth—If the intestate shall leave no husband nor wife nor kindred, the estate shall escheat to the state for the support of the common schools. *As amended, Stats. 1899, 113.*

DISTRIBUTION OF ESTATES. Estate of Foley, 24 Nev.; Clark v. Clark, 17 Nev. 124.

Illegitimate Child.

3046. SEC. 260. Every illegitimate child shall be considered as an heir of the person who shall acknowledge himself to be the father of such child by signing in writing a declaration to that effect in the presence of one credible witness, who shall sign the declaration also as a witness, and shall in all cases be considered as heir of the mother, and shall inherit in whole or in part, as the case may be, in the same manner as if born in lawful wedlock. The issue of all marriages deemed null in law or dissolved by divorce shall be legitimate.

Heirs of Illegitimate Child.

3047. SEC. 261. If any illegitimate child shall die intestate without lawful issue and shall not have been acknowledged as above provided, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

Degrees of Kindred.

3048. SEC. 262. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise or gift from some one of his or her ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from the inheritance.

Advancement a Part of Estate.

3049. SEC. 263. Any estate, real or personal, that may have been given by the deceased in his or her lifetime as an advancement to any child or other lineal descendant shall be considered as part of the estate of the intestate, so far as regards the distribution and division thereof among his or her issue, and shall be taken by such child or other lineal descendant towards his or her share of the estate of the deceased.

When Advancement Exceeds Share.

3050. SEC. 264. If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further portion in the distribution and division of the estate, but he or she shall not be required to refund any part of such advancement; and if the amount so received shall be less than his or her share, he or she shall be entitled to as much more as will give him or her his or her full share of the estate of the deceased.

Gifts and Grants.

3051. SEC. 265. No gift or grant shall be deemed to have been made as an advancement unless so expressed in the gift or grant, or charged in writing by the deceased as an advancement, or acknowledged in writing by the child or other descendant to be such.

Value of Advancement.

3052. SEC. 266. If the value of the advancement shall be expressed in the conveyance, or in the charge thereof made by the deceased, or in the acknowledgment of the party receiving it, it shall be considered of that value in the distribution and division of the estate; otherwise it shall be estimated according to its value when given as nearly as the same can be ascertained.

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3053. SEC. 267. If any child, or other lineal descendant so advanced, shall die before the person making the advancement leaving issue, the advancement shall be taken into consideration in the distribution and division of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced in the like manner as if the advancement had been made directly to them.

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3054. SEC. 268. The provisions of this Act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.

Construction of Act—Compensation of Attorneys.

3055. SEC. 269. This Act shall be liberally construed, to the end that justice may be done all parties, and as speedy settlement of estates at the least expense secured; and all proceedings in matters of estate shall be proceedings of record as other actions and proceedings; and all attorneys for estates or executors or administrators or appointed in the proceedings shall be attorneys of record with

administrator resigns or is removed, a successor may be appointed if a necessity therefor exists, without again proving the death and residence of the deceased.

Estate of Person Dying Intestate, How Distributed—When to Escheat to State.

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like powers and responsibilities as attorneys in other actions and proceedings; and shall be entitled to receive a reasonable compensation, to be paid out of the estate they respectively represent for services rendered, to be allowed by the court.

Regular Proceedings Dispensed With, When.

3056. SEC. 270. When it shall be made to appear to the court or Judge, by affidavit or otherwise, that the value of an estate does not exceed two thousand dollars, the court or Judge may, if deemed advisable, make an order for a summary administration of such an estate, dispensing with all regular proceedings and notices, except the notice of appointment of executor or administrator, which shall always be given by publication for four weeks, provided the cost does not exceed five dollars. Creditors of such an estate must file their claims, due or to become due, with the Clerk, within forty days after the first publication of said notice, and within five days thereafter the executor or administrator must act on the claims filed, and present them in three days thereafter to the Judge for his action. Any claim which shall not be filed within said forty days shall be barred forever. The Judge or court may, however, if deemed proper, order the notice herein provided for to be given by posting, instead of by publication. The court or Judge must be satisfied that proper notice has been given before decreeing distribution of the estate and discharging the executor or administrator. Every claim which shall have been filed as above provided, allowed by the executor or administrator, and approved by the Judge, shall then, and not till then, be ranked as an acknowledged debt of the estate, to be paid in due course of administration. The administration of the estate may be closed and distribution made at any time after the expiration of the time for the Judge to act on the claims, when it shall appear to the court that all the debts of the estate, expenses and charges of administration and allowance to the family, if any, have been paid, and the estate in condition to be finally settled. The total of fees and costs of the Clerk in a summary administration shall not exceed fifteen dollars. The provisions of this section shall apply only to estates of which summary administrations shall be ordered.

Form of Notice to Creditors.

3057. SEC. 271. The notice in this Act required to be given by every executor or administrator upon his qualifying shall be in substantially the following form: "Notice to Creditors: Notice is hereby given that the undersigned has been duly appointed and qualified by the (giving the title of the court), as (executor or administrator, as the case may be) of the estate of _____, late of said county, deceased. All creditors having claims against said estate are required to file the same, with proper vouchers attached, with the Clerk of the Court, within three months of the first publication of this notice. Dated _____." *As amended, Stats. 1899, 114.*

Right of Representation.

3058. SEC. 272. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Escheated Estates.

3059. SEC. 273. If any person shall die, or any person who may have died, within this state, seized of any real or personal estate, and leaving no heirs, representatives, devisees or legatees capable of inheriting or holding the same, and in all cases where there is no owner of such estate capable of holding the same, such estate shall escheat to and be vested in the State of Nevada.

When Estates Escheat—Issue of Citation.

3060. SEC. 274. Whenever the Attorney-General shall be informed, or shall have reason to believe, that any real or personal estate has become escheatable

to this state for the reasons specified in the preceding section, or that any such estate has for any other reason become escheatable, it shall be his duty to file an information in behalf of the state in the district court of the county wherein such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terre-tenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have become escheated; and alleging that by reason thereof the State of Nevada has by law right to such estate; whereupon, such court shall order that a citation be issued, to such person or persons, bodies politic or corporate, alleged in such information to hold, possess or claim such estate, requiring them to appear and show cause why such estate should not be vested in the State of Nevada, said citation to be made returnable within the time allowed by law in other civil actions. The court may also, if deemed advisable, order the citation to be published in a newspaper published in said county (if any), and, if none, then in some other newspaper in this state.

Contesting Escheats—Judgment and Costs Of.

3061. SEC. 275. All persons, bodies politic or corporate, named in such information as terre-tenants or claimants to such estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information—the title of the state to estate therein mentioned—at any time on or before the third day of the return day of the citation; and any other person claiming an interest in such estate may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open court, within the time allowed for pleading as aforesaid; and if any person shall appear and plead as aforesaid denying the title set up by the state, or traverse any material fact set forth in the information, or issue or issues of fact to be made up, the matter shall proceed as other civil actions on issues of fact, and a survey may be ordered as in other civil actions when the boundary is called in question; and after the issues are tried it shall appear from the facts that the state has good title to the estate in the information mentioned, or any part thereof, or if no defense be made by anyone, judgment shall be rendered that the state be seized thereof, and recover costs of suit against defendants, if any appear.

Appeal May Be Taken.

3062. SEC. 276. Any party who shall have appeared to any proceedings as aforesaid, and the Attorney-General, in behalf of the state, shall respectively have the same right to prosecute an appeal or writ of error upon any judgment as aforesaid, as parties in other cases.

Escheated Estates—Proceedings to Recover, When and How Taken—Who Not Barred.

3063. SEC. 277. The State Comptroller shall keep a just and true account of all moneys paid into the treasury, as also of all lands and personal property vested in the estate by escheat; and if, within ten years after any judgment escheating property to the state any person shall appear and claim any money that may have been paid into the state treasury on any real or personal property vested in the state by such judgment, such person may file a petition in the district court, at the seat of government, stating the nature of the claim, with an appropriate prayer for the relief demanded. A copy of such petition shall be served upon the Attorney-General before or at the time of filing the same, who shall, within twenty days thereafter, appear in said proceeding and plead or answer to such petition; or, if the Attorney-General, after examining all the facts, should become convinced that the state had no legal defense against the petition, he may, with the consent of the court, confess on behalf of the state judgment. If judgment shall not be so confessed the petition shall be considered at issue on the twentieth day after its filing, and may be heard by the court on that day or at such future day as the court may order. Upon the hearing the court shall examine into said claim and hear the allegations and proofs, from which, if the

court shall find that such person is entitled to any money paid into the state treasury as aforesaid, it shall, by judgment, order and direct the State Comptroller to draw his warrant in favor of such claimant upon the Treasurer for the sum specified in such order, but without interest or cost to the state. If any real estate is the subject of such trial, and the court finds the claimant entitled to it, the court shall decree accordingly, which shall be effectual for divesting the interests of the state in or to such real estate, but no costs shall be taxed against the state. A certified copy of the judgment and order directing the Comptroller to draw his warrant for money, shall be a sufficient voucher for him so to do. All persons who shall fail to appear and file their petitions within the time limited as aforesaid, shall be forever barred, saving, however, infants, married women, persons of unsound mind, and persons beyond the limits of the United States the right to appear and file their petition as aforesaid, at any time within five years after their respective disabilities shall be removed. The legislature may cause any lands, escheated to the state, or personal estate, other than money, at any time after the judgment of escheat, to be sold, as may be provided by law, and the proceeds paid into the state treasury, in which case the petitioners shall be entitled to the proceeds thereof, in lieu of such lands or personal estate, and the court shall decree accordingly.

Receiver May Be Appointed.

3064. SEC. 278. The said district court, upon the filing of the information hereinbefore provided, upon the motion of the Attorney-General, either before or after answer, upon notice to the party or parties claiming the estate, if known, may, sufficient cause therefor being shown, appoint a receiver to take charge of the real estate or personal property, other than money, mentioned in such information, and receive the rents and profits of the same until the title of such property shall be finally settled. Such receiver shall, before entering upon his duties, execute to the State of Nevada a bond in a sum to be fixed by the court, with sureties to be approved by the Judge, conditioned to faithfully perform the duties of the trust, and fully account to the party finally adjudged to be entitled to the property. Such party may maintain an action on such bond for any default or damage.

Information to Attorney-General of Escheats.

3065. SEC. 279. Any person furnishing original information to the Attorney-General of any property escheatable to the state, with the necessary evidence to sustain the action of the state in that behalf, shall be entitled to receive, upon the final recovery of such property, five per cent of the value of such property so recovered; *provided*, that the amount so recovered by the person furnishing the information shall not in the aggregate exceed the sum of twenty thousand dollars in any one case; *and, provided further*, that one person only shall be entitled to compensation for such service.

Disposition of Money.

3066. SEC. 280. All moneys which have accrued or may hereafter accrue to the state from escheated estates shall be paid into the general fund, and, if need be, in defraying the current expenses of the government and the redemption of the Comptroller's warrants.

Proceedings to Apply.

3067. SEC. 281. When not otherwise specially provided in this Act all the provisions of law regulating proceedings in civil cases shall apply in matters of estate, when appropriate, or the same may be applied as auxiliary to the provisions of this Act.

Repeal.

3068. SEC. 282. The Act entitled "An Act to regulate the settlement of the

estates of deceased persons," approved November 29, 1861 [p. 186], and all Acts amendatory thereof and supplementary thereto, are hereby repealed.

An Act supplemental to an Act entitled "An Act to regulate the settlement of the estates of deceased persons," approved March 23, 1897.

Approved March 4, 1899, 102.

County Clerk May Give Notice Without Order.

3069. SECTION 1. All notices required to be given by the Act entitled "An Act to regulate the settlement of the estates of deceased persons," approved March 23, 1897, may hereafter be given by the County Clerk without an order from the Judge for the same; and when so given for the time and in the manner required by law, they shall be as legal and valid as though made upon an order from such Judge.

Objections Filed With Clerk.

3070. SEC. 2. If the court is not in session at the time set for the hearing of any matter concerning the settlement of the estates of deceased persons, any one opposing the application therein made may file objections thereto with the Clerk, and thereafter the matter shall be heard upon the first day when the court is in session, unless such hearing is continued to some future day.

An Act concerning wills.

Approved December 19, 1862, 58.

Who May Make Wills.

3071. SECTION 1. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his or her estate, real and personal, the same being chargeable with the payment of the testator's debts.

Wills of Married Women.

3072. SEC. 2. Any married woman may dispose of all her separate estate by will, absolutely, without the consent of her husband, either express or implied, and may alter or revoke the same in like manner as a person under no disability may do. Her will must be attested, witnessed, and proved in like manner as all other wills. *As amended, Stats. 1873, 102.*

Valid Wills.

3073. SEC. 3. No will, except such nuncupative wills as are mentioned in this Act, shall be valid unless it be in writing, and signed by the testator, and sealed with his seal, or by some person in his presence, and by his express direction, and attested by at least two competent witnesses, subscribing their names to the will in the presence of the testator.

OBJECT OF ATTESTING WITNESSES TO WILL. Attesting witnesses to a will are not required for the purpose of protecting the contingent and possible right of property in the state by way of escheat; but to prevent the setting up of fictitious wills against heirs and representatives. Estate of Sticknoth; 7 Nev. 223.

Legacies, Gifts, etc.

3074. SEC. 4. All beneficial devises, legacies, and gifts, whatsoever, made or given in any will to a subscribing witness thereto, shall be void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

Nuncupative Wills, When Valid.

3075. SEC. 5. No nuncupative or verbal will shall be good where the estate bequeathed exceeds the value of one thousand dollars, nor unless the same be

proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some one present to bear witness that such was his will, or words of like import, nor unless such nuncupative will was made at the time of the last sickness of the deceased.

Proof Of.

3076. SEC. 6. No proof shall be received of any nuncupative will unless it be offered within three months after speaking the testamentary words.

Probate Of.

3077. SEC. 7. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing by the Probate Judge, and process be issued to call in the widow, should she be a resident of the territory, or other person or persons interested as heirs of the testator, residing in the territory, to contest the probate of such will, if they think proper.

Revocation of Wills.

3078. SEC. 8. No will in writing shall be revoked unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence, or by his direction, or by some other will or codicil in writing, executed as prescribed by this Act; but nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Second Wills, Cancellation of, Does Not Revive First.

3079. SEC. 9. If, after the making of any will, the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, canceling, or revocation the first will shall be duly reexecuted.

Effect of Marriage on Wills.

3080. SEC. 10. If, after the making of any will, the testator shall marry, and the wife shall be living at the death of the testator, such will shall be deemed revoked unless she shall be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of such revocation shall be received.

Not Revived by Death.

3081. SEC. 11. A will executed by an unmarried woman shall be deemed revoked on her subsequent marriage, and shall not be revived by the death of her husband.

Bond, Covenant, etc.

3082. SEC. 12. A bond, covenant, or agreement, made by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against the devisees or legatees, as might be had by law, against the heirs of the testator, if the same had descended to them.

Mortgage Not a Revocation.

3083. SEC. 13. A charge or incumbrance upon any estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate which was previously executed, but the devise and legacies therein contained shall pass, subject to such charge or incumbrance.

Children Born After Wills Made to Share.

3084. SEC. 14. When any child shall have been born after the making of its parent's will, and no provision shall be made for him or her therein, such child shall have the same share in the estate of the testator as if the testator had died intestate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

Children Unprovided for to Share.

3085. SEC. 15. When any testator shall omit to provide in his or her will for any of his or her children, or for the issue of any deceased child, unless it shall appear that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he or she had died intestate.

After-Born Children, How Provided For.

3086. SEC. 16. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest or other provision in the will would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement.

3087. SEC. 17. If such child or children, or their descendants, so unprovided for shall have had an equal proportion of the testator's estate bestowed upon them in the testator's lifetime, by way of advancement, they shall take nothing in virtue of the provisions of the three preceding sections.

Descendants to Inherit, When.

3088. SEC. 18. When any estate shall be devised to any child or other relation of the testator, and the devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate so given by the will, in the same manner as the devisee would have done if he would have survived the testator.

Devisee of Land.

3089. SEC. 19. Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate.

After-Acquired Property.

3090. SEC. 20. Any estate, right, or interest in lands acquired by the testator, after the making of his or her will, shall pass thereby, in like manner as if it passed at the time of making the will, if such should manifestly appear by the will to have been the intention of the testator.

Will Defined.

3091. SEC. 21. The term "will" as used in this Act, shall be so construed as to include all codicils as well as wills.

CONSTRUCTION OF WILLS. The testator, by his will, disposed of his property to his wife, "having the fullest confidence in her capacity, judgment, discretion and affection, to properly bring up, educate and provide for our children, and to manage and dispose of my said property in the best manner for their interests and her own": *Held*, that the devisee took the property devised as absolute owner, and not upon trust. *Hunt v. Hunt*, 11 Nev. 442.

An Act relating to holographic wills.

Approved March 20, 1895, 112.

Holographic Wills Valid.

3092. SECTION 1. Property may be disposed of and taken under holographic wills. Such wills shall be valid and have full effect for the purpose for which they are intended.

Holographic Will Defined.

3093. SEC. 2. An holographic will is one that is entirely written by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state and need not be witnessed.

How Proved.

3094. SEC. 3. An holographic will may be proved in the same manner as other private writings are proved.

CIVIL PRACTICE.

An Act adopting the common law.

Approved January 24, 1883, 14.

Application of Common Law.

3095. SECTION 1. The common law of England, so far as it is not repugnant to, or in conflict with the constitution and laws of the United States, or the constitution and laws of this state, shall be the rule of decision in all the courts of this state.

1. **THE COMMON LAW OF ENGLAND**, as adopted in this country, is usually to be taken as modified by English statutes passed prior to the Declaration of American Independence. *Hamilton v. Kneeland*, 1 Nev. 40, affirmed; *Clarke v. Clarke*, 17 Nev. 124.

COMMON LAW RULE. Condition cannot be reserved to any but the grantor and his heirs, not recognized as law in this country. 1 Nev., *supra*.

CONDITION BROKEN. Statute 32, Henry VIII, providing for entering, upon condition broken, is applicable not only to breach of condition in law but also in deed. *Id*.

2. **ENGLISH STATUTE** in force prior to Declaration of Independence part of common law *Evans v. Cook*, 11 Nev. 69, affirming *Ex Parte Blanchard*, 9 Nev. 105.

3. **COMMON LAW—Relating to Marriage and Divorce Adopted.** *Wuest v. Wuest*, 17 Nev. 217.

4. **COMMON LAW—QUO WARRANTO—When Will Lie.** *Ryan v. Cronan*, 23 Nev. 437.

An Act to regulate proceedings in civil cases in the courts of justice of this state, and to repeal all other Acts in relation thereto.

Approved March 8, 1860, 196.

TITLE I.

The provisions of this title as to parties to actions are made applicable to justices' courts, by Section 509 of this Act.

*Of the Form of Civil Actions and the Parties Thereto.***One Form of Action.**

3096. SECTION 1. There shall be in this state but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

Designation of Parties.

3097. SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Question of Fact Not Put in Issue by Pleadings.

3098. SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Actions, by Whom Prosecuted.

3099. SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this Act.

1. PARTY FOR WHOSE BENEFIT CONTRACT IS MADE MAY SUE. *Alcalde v. Morales*, 3 Nev. 137; *Miliani v. Tognini*, 19 Nev. 133.
2. ASSIGNEE OF JUDGMENT—Proper Party. *Mandlebaum v. Gregovich*, 24 Nev.

Set-Off Not Prejudiced by Assignment.

3100. SEC. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of, the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration, before due.

Action by Executor, etc.

3101. SEC. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Married Woman a Party.

3102. SEC. 7. When a married woman is a party, her husband shall be joined with her, except that: First—When the action concerns her separate property, she may sue alone. Second—When the action is between herself and her husband, she may sue or be sued alone.

ACTION NOT MAINTAINABLE BY MARRIED WOMAN PLAINTIFF WITHOUT PROPER AVERMENTS.
In a suit where the complaint was amended, but without adding any averments of her right to sue alone: *Held*, that the admission of evidence on such an amended complaint against defendant's objection was error. *Warren v. Quill*, 8 Nev. 218.

Defense by Wife.

3103. SEC. 8. If a husband and wife be sued together, the wife may defend for her own right.

Infant, When a Party.

3104. SEC. 9. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted, or by a Judge thereof.

Guardian, When Appointed.

3105. SEC. 10. The guardian shall be appointed as follows: First—When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the infant. Second—When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

Injury to Child, Action For.

3106. SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child, and a guardian for the injury or death of his ward.

SUIT BROUGHT BY MOTHER AS GUARDIAN—Ward Attains Majority Before Trial—No Joint Action Arises—Ward Should Have Been Substituted. *Ricord v. C. P. R. Co.*, 15 Nev. 167.

Who May Be Joined as Plaintiffs.

3107. SEC. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Act.

Defendant, Who to Be Made.

3108. SEC. 13. Any person may be made a defendant, who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties, Who Joined.

3109. SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. Tenants in common, joint tenants, or copartners, or any number less than all, may jointly or severally bring or defend or continue the prosecution or defense of any action for the enforcement of the rights of such person or persons.

1. **TENANTS IN COMMON** may join in action to recover common property. *Alford v. Dewin*, 1 Nev. 207.

SEVERING OF INTEREST PENDING LITIGATION does not abate suit. *Id.*

2. **PERSONS JOINTLY LIABLE** must all be made defendants and a joint judgment rendered against all. *Keller v. Blasdel*, 1 Nev. 492.

3. **PARTIES—NON-JOINDER OF PLAINTIFFS, HOW PROPERLY PLEADED.** An objection of non-joinder of parties plaintiff cannot be taken by demurrer unless the complaint affirmatively shows that the party for whose non-joinder the demurrer is interposed was *living* when the suit was commenced. If this fact does not appear on the face of the complaint, the objection must be taken by answer. *Deegan v. Deegan*, 22 Nev. 186.

SAME—ANSWER MUST SHOW PARTY LIVING. An allegation in an answer of the non-joinder of proper parties plaintiff, is defective when it does not show that the omitted party or parties were *living* at the date of the filing of the complaint. *Id.*

4. **WHERE ONE OF SEVERAL JOINT CONTRACTORS DIES**, the survivors may be proceeded against without uniting the representatives of the deceased. *Fowler v. Houston*, 1 Nev. 469.

5. **ACTION BETWEEN PARTNERS—WHEN ONE NOT A NECESSARY PARTY.** Third partner non-resident whose interest not prejudiced by present action. *Beck v. Thompson*, 22 Nev. 109.

6. **WATER SUIT—WHO MAY UNITE IN.** Although parties who have separate interests in the water of a stream cannot unite in an action for damages for its past diversion, they may unite in an action to restrain future diversions. *Ronnow v. Delmua*, 23 Nev. 29.

7. **DEFECT OF PARTIES—ACTION TO SET ASIDE TRUST DEED.** Where one beneficiary brings suit all other beneficiaries are necessary parties; if they refuse to join as plaintiffs they must be made defendants. *Robinson v. Kind*, 23 Nev. 330; *Bliss v. Grayson*, 24 Nev.

8. **DEFECT OF PARTIES—EFFECT ON JUDGMENT.** Where, owing to a defect of parties before the court upon such a writ, any judgment that might be entered would not be binding upon the real parties in interest, the writ will be dismissed. *State v. Com. Washoe Co.*, 23 Nev. 247.

9. **WIFE NOT PARTY TO ACTION TO RECOVER COMMON PROPERTY.** *Crow v. Van Sickle*, 6 Nev. 146.

10. **DISSOLUTION OF COPARTNERSHIP—When Wife Is a Necessary Party Defendant.** *Rhodes v. Williams*, 12 Nev. 20.

11. **STATE PROPER PARTY PLAINTIFF IN DELINQUENT SCHOOL TAX SUIT.** *State v. First Nat. Bank (No. 3)*, 4 Nev. 491.

12. **PROPER AS DISTINGUISHED FROM NECESSARY PARTIES.** Holder of mechanic's lien attaching prior to a mortgage is a *proper* but not a *necessary* party to pass the legal title to a purchaser under the decree. *In Re Smith*, 4 Nev. 264.

13. **PARTY IN POSSESSION OF LAND** may maintain action for interference with his rights. *Simpson v. Williams*, 18 Nev. 432.
14. **PARTNERS CANNOT SUE IN PARTNERSHIP NAME.** *Mexican Mill Co. v. Yellow Jacket M. Co.*, 4 Nev. 40.
15. **INTEREST OF PLAINTIFF**—When Sufficient to Maintain Action. *White Pine Co. Bank v. Sadler*, 19 Nev. 98.
16. **NON-JOINDER OF DEFENDANTS IN ACTIONS EX DELICTO.** In action for damages for trespass all or any of the guilty parties may be sued. *Mandlebaum v. Russell*, 4 Nev. 551.
17. **PERSONS NOT INTERESTED NOT TO BE PLAINTIFFS**—*Replevin Bond*—*Sheriff Not Interested.* *McBeth v. Van Sickle*, 7 Nev. 134.
18. **MISJOINDER OF PARTIES PLAINTIFF.** *Fogg v. N. C. O. R. Co.*, 20 Nev. 429.

Separately or Jointly Liable.

3110. SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

JOINT ACTION AT LAW cannot be maintained against survivor and administrator of deceased joint maker of a promissory note. Action against survivor. On *joint and several* note representative of deceased maker may be sued on *several* liability. *Maples v. Geller*, 1 Nev. 233.

Action Does Not Abate by Death of Party.

3111. SEC. 16. An action shall not abate by the death or other disability, of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

1. **ASSIGNEE OF ACCOUNT** may sue in his own name. Assignor need not be made a party though he have interest. *Carpenter v. Johnson*, 1 Nev. 331.
2. **SUBSTITUTION OF ASSIGNEE AS PLAINTIFF.** Under above section not necessary for assignee to file supplemental complaint. Assignee takes place of original plaintiff. Original plaintiff estopped from denying transfer, when. *Virgin v. Brubaker*, 4 Nev. 31.
3. **PLAINTIFF'S RIGHT TO SUE—MAINTENANCE.** The assignment of a bare right to file a bill in equity for a fraud committed on the assignor cannot be maintained in the name of the assignee. It is contrary to public policy and savors of the character of maintenance. *Gruber v. Baker*, 20 Nev. 453.

Controversy Determined, When.

3112. SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in, and thereupon the party directed by the court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the court may order, after service, in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require.

1. **ACTION BETWEEN TENANTS IN COMMON.** Court may order all necessary parties into court. *Mitchell v. O'Neale*, 4 Nev. 504.
2. **ABOVE SECTION CONSTRUED.** *Robinson v. Kind*, 23 Nev. 330; *Bliss v. Grayson*, 24 Nev.

TITLE II.

*Of the Place of Trial of Civil Actions.***Venue of Actions Determined by Subject of Action.**

3113. SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this Act: First—For the recovery of real property, or of an estate, or interest therein, or for the determination in any form of such right or interest, and for injuries to real property. Second—For the partition of real property. Third—For the foreclosure of a mortgage of real property; *provided*, that where such real property is situate partly in one county and partly in another, the plaintiff may select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in the first, second, and third subdivisions of this section.

Robinson v. Kind, 23 Nev. 330.

Venue of Action Determined by Cause of Action.

3114. SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial: First—For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed. Second—Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Residence of Parties Determines Place of Trial.

3115. SEC. 20. In all other cases, the action shall be tried in the county in which the defendants, or any one of them, may reside at the commencement of the action; or, if none of the defendants reside in the state, or if residing in the state, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant, or defendants, may be about to depart from the state, such action may be tried in any county where either of the parties may reside or service be had, subject, however, to the power of the court to change the place of trial, as provided in this Act.

1. DEFENDANT'S RIGHT OF TRIAL AT HIS RESIDENCE. A defendant who comes within the purview of Sec. 20 of the Practice Act is entitled, as a matter of right, to have an action against him tried in the county of his residence; the statute is peremptory. *Williams v. Keller*, 6 Nev. 141.

DISCRETION AS TO CHANGE OF PLACE OF TRIAL. As a general rule, the matter of change of place of trial is within the discretion of the court; but when the motion to change is made on the ground of the residence of defendant (*Practice Act*, Sec. 20), there is no room for the exercise of discretion. *Id.*

WAIVER NOT PRESUMED EXCEPT IN CLEAR CASE. The legal presumption of a waiver of any right by a litigant will not be drawn except in a clear case, and especially not when to allow such a presumption would be to deprive a party of his day in court. *Id.*

Civil Cases—May Change Place of Trial, When.

3116. SEC. 21. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant before the time for answering expire demand in writing that the trial be had in the proper county, and the place of trial be thereupon changed by consent of parties, or by order of the court, as is provided in this section. The court may, on motion, change the place of trial in the following cases:

First—When the county designated in the complaint is not the proper county.

Sec. 3115 C. C. 2.

Second—When there is reason to believe that an impartial trial cannot be had therein.

Third—When the convenience of witnesses and the ends of justice would be promoted by the change.

Fourth—When from any cause the Judge is disqualified from acting in the action. When the place of trial is changed, all other proceedings shall be had in the county to which the place of trial is changed; unless otherwise provided by consent of the parties in writing duly filed, or by order of the court, and the papers shall be filed, or transferred, accordingly. *As amended, Stats. 1895, 64; 1897, 87.*

1. **CHANGE OF VENUE—DELINQUENT TAX SUITS.** The provisions of the Practice Act governing change of place of trial are not applicable to actions to recover delinquent taxes. *State v. Shaw, 21 Nev. 222.*
2. **CHANGE OF VENUE—BIAS OF JUDGE.** Bias or prejudice on the part of the Judge constitutes no legal incapacity to sit on the trial of a cause, and is not sufficient ground to authorize a change of the place of trial. *Allen v. Reilly, 15 Nev. 452.*
3. **CHANGE OF VENUE.** General interest of people of county in question involved no ground for. *Conley v. Chedic, 7 Nev. 336.*
4. **AFFIDAVIT FOR CHANGE OF VENUE** must show that fair and impartial trial cannot be had, to be sufficient. *H. & N. G. & S. M. Co. v. Bajazette G. & S. M. Co., 1 Nev. 322.*
5. **AFFIDAVIT TO CHANGE VENUE**, made on ground of interest of Judge, which merely states belief of affiant, without stating facts on which belief is founded, is insufficient. *Table Mountain Co. v. Waller's Defeat Co., 4 Nev. 218.*

CHANGE OF VENUE DENIED ON PERSONAL KNOWLEDGE OF JUDGE. *Id.*

6. **AFFIDAVIT FOR CHANGE OF VENUE**, which states that affiant "verily believes," etc., states mere conclusions and not facts, and is insufficient. *Kercheval v. McKenney, 4 Nev. 294.*
7. **CHANGE OF VENUE, TO SUIT CONVENIENCE OF WITNESSES**, should not be denied because application was not made until after answer was filed and cause set for trial, unless there had been delay in making the application, or the parties had already prepared for the trial by subpoenaing witnesses. *Sheckles v. Sheckles, 3 Nev. 404.*
8. **CHANGE OF VENUE—ACTION AGAINST COUNTY Governed by Same Rules of Practice as Other Civil Suits.** *Clark v. Lyon Co., 8 Nev. 181.*

WAIVER OF CHANGE OF VENUE. Where county appeared and answered without objections: *Held*, to have waived its right to change of venue. *Id.*

9. **TRANSFER OF ACTION BY STIPULATION.** *Held*, no error where, on stipulation, case was transferred back because not tried within certain time in new district. *Lyon Co. v. Washoe Co., 6 Nev. 241.*
10. **TRANSFER OF CASE TO NEW COUNTY Not Change of Venue.** *Hooton v. McKinney, 5 Nev. 194.*

TITLE III.

Of the Manner of Commencing Civil Actions.

How Commenced.

3117. SEC. 22. Civil action in the district courts shall be commenced by the filing of a complaint with the Clerk of the Court, and the issuance of a summons thereon; *provided*, that after the filing of the complaint a defendant in the action may appear, answer, or demur, whether the summons has been issued or not, and such appearance, answer, or demurrer, shall be deemed a waiver of summons.

For alias summons, see Sec. 3702.

WAIVER OF SUMMONS. A defendant by filing a demurrer and answer to plaintiff's complaint waives the issuance of a summons. *Rose v. Richmond M. Co., 17 Nev. 25.*

Complaint and Summons.

3118. SEC. 23. The Clerk shall indorse on the complaint the day, month, and year the same is filed, and at any time within one year after the filing of the same the plaintiff may cause to be issued a summons thereon. The summons shall be issued and signed by the attorney of the plaintiff, or by the Clerk, and when issued by the Clerk shall be issued under the seal of the court.

Summons, What Shall State.

3119. SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that judgment by default will be taken against him, according to the prayer of the complaint; briefly stating the sum of money or other relief demanded in the complaint. The names of the plaintiff's attorneys shall be indorsed upon the summons.

Answer, Time Allowed For.

3120. SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First—If the defendant is served within the county in which the action is brought, ten days. Second—If the defendant is served out of the county, but in the district in which the action is brought, twenty days. Third—In all other cases, forty days.

1. **TIME TO ANSWER.** Where plaintiff might proceed under two laws: summons contradictory, requiring defendant, in one clause to answer in forty days, in another twenty days default cannot be taken until after longer period. *Kidd v. Four-Twenty M. Co.*, 3 Nev. 381.
2. **SECOND SERVICE OF SAME SUMMONS.** Where a summons has been served upon a defendant out of the district and afterwards served upon him in the district, with the intention of shortening the time allowed him to answer: *Held*, that the second service was an absolute nullity. *Mayenbaum v. Murphy*, 5 Nev. 383.

Notice Inserted in Summons.

3121. SEC. 26. There shall also be inserted in the summons a notice in substance as follows: First—In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint. Second—In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

1. **NOTICE IN SUMMONS—WHEN DEFECTIVE.** The distinction made in above section of notice required in different cases should be observed and enforced by the courts as essential and necessary. *Sweeney v. Schultes*, 19 Nev. 53.
- IF DEFENDANT APPEAR** by filing a demurrer or answer, defective notice in summons may be disregarded. *Id.*
2. **NOTICE IN SUMMONS—DEFECT NOT AFFECTING SUBSTANTIAL RIGHTS.** The omission in the notice in the summons of the amount for which plaintiff will take judgment on failure to answer, when a certified copy of the complaint served with the summons states the amount, if it be an error, is not one affecting any substantial right, and the court should, in every stage of the proceedings, disregard it. *Higley v. Pollock*, 21 Nev. 198.
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3122. SEC. 27. In an action for the foreclosure of a mortgage upon real property, or affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the Recorder of the county in which the property, or some part thereof, is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property, in that county affected thereby, and the defendant may also in such notice state the nature and extent of the relief claimed in the answer. From the time of filing, only, shall

the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; and in case of the foreclosure of such mortgage all purchasers or incumbrancers, by unrecorded deed or other instrument in writing made prior to the filing of such notice, and subsequent to the date of such mortgage, shall be deemed and held purchasers or incumbrancers subsequent to the filing of such notice, and subject thereto, unless they can show that at the time of filing the notice the plaintiff had actual notice of such purchase or incumbrance.

Summons, by Whom Served.

3123. SEC. 28. The summons shall be served by the Sheriff of the county where the defendant is found, or by his deputy, or by any citizen of the United States over twenty-one years of age; and, except as hereinafter provided, a copy of the complaint, certified by the Clerk or the plaintiff's attorney, shall be served with the summons. When the summons shall be served by the Sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, of its service, and of the service of a copy of the complaint, to the office of the Clerk of the county in which the action is commenced. When the summons is served by any other person, as before provided, it shall be returned to the office of the Clerk of the county in which the action is commenced, with the affidavit of such person of its service, and of the service of a copy of the complaint. If there be more than one defendant to the action residing within the county in which the action is brought, a copy of the complaint need be served only on one of such defendants.

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3119. SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that judgment by default will be taken against him, according to the prayer of the complaint; briefly stating the sum of money or other relief demanded in the complaint. The names of the plaintiff's attorneys shall be indorsed upon the summons.

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3120. SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First—If the defendant is served within the county in which the action is brought, ten days. Second—If the defendant is served out of the county, but in the district in which the action is brought, twenty days. Third—In all other cases, forty days.

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1. SERVICE OF SUMMONS ON Secretary of Company, Good. *Mott & Co. v. Independent G. & S. M. Co.*, 1 Nev. 247.
2. SERVICE OF SUMMONS upon California Company, made in accordance with the above section, is valid. *Caples v. C. P. R. Co.*, 6 Nev. 265.
3. SERVICE OF SUMMONS ON BUSINESS MANAGER OF A CORPORATION. Where the officer certifies that he served the summons upon the business manager of a corporation: *Held*, that this was not a compliance with the provisions of the statute requiring the service to be upon the managing agent. *Scorpion S. M. Co., v. Marsano*, 10 Nev. 370.
- IDEM. Courts must know, and officers must be presumed to know, what the legislature meant by the term managing agent; but courts cannot know what an officer means by a designation unknown to the law. *Id.*
4. SUPPLEMENTAL SERVICE BY MAIL. *Held*, that in the absence of the personal service required on California corporation by above section (29), the mailing of a copy of the summons and complaint to the President and Trustees added no force to the officer's return on the summons. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 312.

Sections 30 to 35, inclusive, made applicable to justices' court by Section 519. Sections marked J. C. are applicable to justices' court.

Service on Non-Resident, Corporation or Joint Stock Association—Publication.

J. C.

3125. SEC. 30. When the person on whom the service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or being a corporation or joint stock association, cannot be served as provided in section twenty-nine, and the fact shall appear by affidavit, to the satisfaction of the court or Judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or Judge may grant an order that the service be made by the publication of the summons. *As amended, Stats. 1889, 22.*

1. AFFIDAVIT FOR PUBLICATION OF SUMMONS. To obtain a legal service by publication of a summons against a non-resident, it must appear by affidavit, not only that the defendant is a non-resident, but also that a cause of action exists against him; and a judgment procured in such a case before a Justice of the Peace, when the latter fact does not appear by affidavit, is void. *Little v. Currie*, 5 Nev. 90.

ORDER FOR PUBLICATION OF SUMMONS which fails to state any fact upon which it is founded, is fatally defective. *Id.*

ORDER FOR PUBLICATION BEFORE ISSUANCE OF SUMMONS PREMATURE. Where an order, made by a Justice of the Peace upon the filing of an affidavit for publication of summons, directed that "summons be issued in this case as above entitled and be published, etc.": *Held*, that the direction for a summons to issue was not the office of such an order, and that if the summons did not already exist the order was premature. *Id.*

STATUTORY PROVISIONS FOR OTHER THAN PERSONAL SERVICE, for acquiring jurisdiction over a defendant, must be strictly pursued. *Id.*

2. PUBLICATION OF SUMMONS. Order for must succeed, not precede, the issuance of the summons. *Coffin v. Bell*, 22 Nev. 169.
 3. AFFIDAVIT FOR PUBLICATION OF SUMMONS against a non-resident defendant, which states legal conclusions instead of facts, is fatally defective. *Roy v. Whitford*, 9 Nev. 370.
- JURISDICTION OF JUSTICE OF THE PEACE OVER NON-RESIDENT. Precise method of acquiring jurisdiction must be pursued. *Id.*

SECTIONS 30 AND 511 OF PRACTICE ACT to be construed together. *Id.*

4. CONSTRUCTIVE SERVICE OF SUMMONS. A party relying solely upon a constructive service of summons is bound to prove a strict compliance with some of the modes prescribed by the statute for obtaining such service. *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370.

5. SUMMONS BY PUBLICATION—Justice of the Peace—No Presumption in Favor of Jurisdiction. Victor M. & M. Co. v. Justice Court, 18 Nev. 21.

AFFIDAVIT FOR PUBLICATION OF SUMMONS—SUFFICIENCY OF. When against foreign corporation, must show that corporation had no officer within the state upon whom personal service could be made. ~~must state facts showing that diligence had been used to~~ unserved,

SECTION 1. Section thirty-one of said Act is hereby

Civil Practice
Act amended

amended so as to read as follows:

Service of
summons by
publication.

Section 31. The order shall direct the publication to be made in a newspaper, to be designated by the Court or Judge thereof as one most likely to give notice to the person to be served, for a period of six weeks, and at least once a week during said time. In case of publication, where the residence of a non-resident or absent defendant is known, the Court or Judge shall also direct a copy of the summons and complaint to be deposited in the postoffice, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint, out of the State, shall be equivalent to completed service by publication and deposit in the postoffice, and the person so served shall have forty days after said service to appear and answer or demur. The service of summons shall be deemed complete in cases of publication at the expiration of six weeks from the first publication, and in cases when a deposit of a copy of the summons and complaint in the postoffice is also required, at the expiration of six weeks from such deposit. In actions upon contracts for the direct payment of money, evidenced by written instrument, the Court may, instead of ordering publication, appoint an attorney to appear and answer for the non-resident, absent or concealed defendant, and conduct the proceedings on his part.

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J. C.

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2. DEPOSIT IN POSTOFFICE—Must Be Addressed to Defendant—Section 31 Construed. Scorpion S. M. Co. v. Marsano, 10 Nev. 370.

3. SUMMONS BY PUBLICATION VOID when defendant's residence is known, unless court directs copy of complaint and summons deposited in postoffice directed to defendant. Victor M. & M. Co. v. Justice Court, 18 Nev. 22.

ORDER FOR DEPOSIT MUST BE MADE BY THE COURT. A deposit made by an attorney without an order of the court is insufficient. Id.

4. SERVICE BY PUBLICATION—Non-Resident Defendant—Action in Rem. Robinson v. Kind, 23 Nev. 330.

Summons in Case of Joint Defendants.

J. C.

3127. SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First—If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served; or, second, if the action be against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

1. ACTION AGAINST JOINT DEBTORS, WHERE ONE ONLY SERVED—Pleading by One of Several Joint Debtors—Judgment by Confession of Joint Debtor—Above Section (32) Construed. Flannery v. Anderson, 4 Nev. 437.

2. PRACTICE ACT, SECTION 32—JUDGMENT AGAINST JOINT DEBTORS. Where the defendants in an action against two are both served with the summons, a judgment, under Section 32 of the Practice Act, cannot be entered against one to be executed against his separate property and the joint property of both. Mayenbaum v. Murphy, 5 Nev. 383.

3. CONSTRUCTION OF SECTION 32 OF PRACTICE ACT. Section 32 of the Practice Act does not provide a rule for the disposition of actions against several joint debtors, where all have been served and appeared, and the proceedings against one are suspended by bankruptcy. *Tinkum v. O'Neale*, 5 Nev. 93.
4. OBJECT OF SECTION 32 OF PRACTICE ACT was to make the property of all partnership associations and joint associations liable on judgments obtained upon service of one member of the association. *Whitmore v. Shiverick*, 3 Nev. 233.
- ONE PARTNER SERVED ANSWERS FOR ALL as far as joint property is concerned. *Id.*
- "COPARTNERSHIP PROPERTY AND ASSETS," JOINT PROPERTY. *Id.*

Proof of Service of Summons.

J. C.

3128. SEC. 33. Proof of the service of the summons shall be as follows: First—If served by the Sheriff or his deputy, the affidavit or certificate of such Sheriff or deputy; or, second, if by any other person, his affidavit thereof; or, third, in case of publication, the affidavit of the publisher, his foreman or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the postoffice, if the same shall have been deposited; or, fourth, the written admission of the defendant.

1. SUMMONS ONCE FULLY SERVED. Where service of a summons has been made, and the demands of the writ satisfied, the conclusive presumption of the law is, under Sections 28 and 33 of the Practice Act, that its office, having been accomplished, no person can effectively thereafter use it for its original purpose. *Mayenbaum v. Murphy*, 5 Nev. 333. See *Caples v. C. P. R. Co.*, 6 Nev. 265.
2. SUMMONS—SECOND SERVICE OF. A void service of a summons does not preclude another and perfect service of the same; and the fact of the summons having been returned and filed does not prevent its being withdrawn and properly served. *Coffin v. Bell*, 22 Nev. 169.
3. PROOF OF PUBLICATION OF SUMMONS—DEPOSIT IN POSTOFFICE. Such deposit shall be proved by affidavit. *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370.
4. RETURN ON SUMMONS. The mere statement of defendant's attorney that no copy of the summons was served, will not be allowed to contradict the Sheriff's return on the original summons certifying that a true copy had been served on defendant. *Higley v. Pollock*, 21 Nev. 198.
5. EFFECT OF OFFICER'S RETURN—Recital of Facts in Judgment Not Conclusive. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 312.
6. SUFFICIENCY OF SHERIFF'S RETURN—Clerical Mistake Not Vital. *Allen v. Mayberry*, 14 Nev. 115.
7. SERVICE OF SUMMONS—Contradiction in Record—Presumptions—Recital of Legal Service of Summons in Judgment. *Blasdel v. Kean*, 8 Nev. 305.

Affidavit of Service.

J. C.

3129. SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

Jurisdiction Acquired by Service.

J. C.

3130. SEC. 35. From the time of the service of the summons in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

1. WAIVER OF SUMMONS accomplished by defendant filing demurrer and answer. *Rose v. Richmond M. Co.*, 17 Nev. 28.
2. SERVICE OF ANSWER NOT NECESSARY TO GIVE COURT JURISDICTION OF DEFENDANTS. *Maples v. Geller*, 1 Nev. 233.
3. NON-RESIDENT—VOLUNTARY APPEARANCE BY ATTORNEY. Court acquired jurisdiction of both person and property by such appearance. *Frankel & Co. v. Creditors*, 20 Nev. 42.

TITLE IV.*Of the Pleadings in Civil Actions.***Pleadings.**

3131. SEC. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Forms and Rules.

3132. SEC. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this Act.

Pleadings of Plaintiff and Defendant.

3133. SEC. 38. The only pleadings on the part of the plaintiff shall be the complaint, or demurrer to the defendant's answer; and the only pleadings on the part of the defendant shall be the demurrer, or the answer. The demurrer or answer of the defendant, and the demurrer of the plaintiff, shall be filed with the Clerk, and a copy served on the adverse party or his attorney.

SERVICE OF ANSWER is for convenience of plaintiff's counsel, and may be enforced by the court, but is not necessary to give jurisdiction of defendant. *Maples v. Geller*, 1 Nev. 233.

Complaint, What to Contain.

3134. SEC. 39. The complaint shall contain: First—The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant. Second—A statement of the facts constituting the cause of action, in ordinary and concise language. Third—A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof shall be stated.

1. SUFFICIENCY OF COMPLAINT—ACTION ON JUDGMENT. *Mandlebaum v. Gregovich*, 24 Nev.
2. SUFFICIENCY OF COMPLAINT—ACTION ON CONTRACT. Allegation of actual damage or facts from which it must be inferred absolutely necessary to recover more than nominal damages. *Richardson v. Jones & Denton*, 1 Nev. 406.
3. SUFFICIENCY OF COMPLAINT—ASSUMPSIT. *Richardson v. Hoole*, 13 Nev. 492.
4. ASSUMPSIT, COMMON COUNTS IN—MONEY HAD AND RECEIVED. Defendant may declare generally on common counts. Facts which create indebtedness need not be stated. *White Pine Co. Bank v. Sadler*, 19 Nev. 98.
5. SUFFICIENCY OF COMPLAINT—MONEY LOANED. If complaint charges indebtedness, manner in which it accrued, promise to pay and refusal, it is sufficient. *Williams v. Glasgow*, 1 Nev. 533.
6. SUFFICIENCY OF COMPLAINT—ACTION ON CONTRACT. Complaint must allege not only value of wood delivered to defendant, but that their contract made them liable for that quantity. *Horton v. Ruhling & Co.*, 3 Nev. 498.
7. CONTRACT—ACTION FOR BREACH OF. Averments that money was expended "to defendant's use," and alleging his "promise to pay," may be treated as surplusage. *Orr Ditch Co. v. Reno Water Co.*, 19 Nev. 60.
8. CONTRACT—INSUFFICIENCY OF COMPLAINT. Failure to allege "promise to pay": *Held*, "complaint did not state facts sufficient, etc." *Gerrens v. Huhn & Hunt S. M. Co.*, 10 Nev. 137.
9. CONTRACT, BREACH MUST BE ALLEGED. If not alleged, complaint fails to state facts sufficient. *Hutchens v. Sutherland*, 22 Nev. 363.
10. CONSTRUCTION OF PLEADING—ALLEGATION OF PLACE OF CORPORATION. An allegation that defendant "is a corporation duly organized and doing business as such in the State of Nevada" is equivalent to an averment that such defendant is a corporation duly organized in the State of Nevada. *Little v. V. & G. H. W. Co.*, 9 Nev. 317.
11. ACTION AGAINST TRUSTEES OF CORPORATION—Complaint—Cause of Action—Proper Parties Defendant. *Marshall v. G. F. M. Co.*, 16 Nev. 158.
12. VOID NOTE—SUIT ON ORIGINAL CONSIDERATION. Pleading must set out such consideration. *Wayman v. Torreyson*, 4 Nev. 124.
13. PROMISSORY NOTE—Possession Raises Presumption of Ownership—Ownership Need Not Be Pleading. *Todman v. Purdy*, 5 Nev. 238; *Allen v. Reilly*, 15 Nev. 452.
14. POSSESSION OF NOTE NEED NOT BE PLEADED—Note in Possession of Defendant. *McClusky v. Gerhauser*, 2 Nev. 47.
15. COMPLAINT—PROMISSORY NOTE GOOD where all other facts properly alleged, although non-payment not alleged in direct terms. *Howard v. Richards*, 2 Nev. 128.
16. NOTE EXECUTED IN FIRM NAME After Death of a Partner—Allegations, etc. *Manning v. Smith*, 16 Nev. 85.

17. SUFFICIENCY OF COMPLAINT—TITLE TO LAND. Right of mortgagor to receive legal title must be alleged. *Gentry v. Low*, 4 Nev. 99.
18. SUFFICIENCY OF COMPLAINT—LABOR, SERVICES. Certain sum due alleged, promise to pay and value not alleged: *Held*, whatever the defects of the complaint, they were cured by defendant's pleading and by the verdict. *McManus v. Ophir S. M. Co.*, 4 Nev. 15.
19. COMPLAINT INSUFFICIENT TO SUPPORT JUDGMENT. Appellate court's duty to reverse, although counsel has not set forth grounds. *Van Doren v. Tjader*, 1 Nev. 380.
- COMPLAINT—PRESUMPTION REGARDING. Where terms and conditions of agreement are set forth, and violation of same charged in complaint, if instrument is such as law requires to be in writing, courts will presume same to be in writing until contrary is shown. *Id.*
20. PLEADING ON INSURANCE POLICY. *Healey v. Imperial Fire Insurance Co.*, 5 Nev. 268.
21. SUFFICIENCY OF COMPLAINT FOR INJUNCTION TO STAY WASTE—Intendments in Favor of Complaint After Judgment, or After Order Based Upon It. *Meadow Valley M. Co. v. Dodds*, 6 Nev. 261.
22. SUFFICIENCY OF ALLEGATION—DELINQUENT TAX SUIT. *State v. Sadler*, 21 Nev. 13.
23. ALLEGATIONS REFER TO DATE OF COMMENCEMENT OF ACTION. *Ronnow v. Delmue*, 23 Nev. 29.
24. DAMAGE, NOT VALUE, SHOULD BE ALLEGED. In case where plaintiff was not allowed to remove fixtures. *Prescott v. Wells, Fargo & Co.*, 3 Nev. 82.
25. PARTY MUST PROVE THE CASE HE MAKES IN HIS PLEADING, OR FAIL. Party alleging and seeking to recover under contract, cannot recover on proof of a trespass. *C. R. L. Co. v. Bassett*, 2 Nev. 249.
26. ACTIONS ARISING OUT OF TORT AND OUT OF CONTRACT. Distinction between should be maintained in pleading. *Knickerbocker & N. S. M. Co. v. Hall*, 3 Nev. 194.
27. WHERE INSTRUMENT VOID BY STATUTE. Statute should be specially pleaded. *Maynard v. Johnson*, 2 Nev. 18.
- DEFENDANT MAY TAKE ADVANTAGE OF HIS OWN FRAUD where necessary to show violation of statute. *Id.*
28. DEFECTIVE COMPLAINT CURED BY VERDICT. Action for damages for improperly suing out writ of attachment, must aver that it was sued out "without probable cause." *Levy v. Fargo*, 1 Nev. 415.
29. FACTS STATED IN COMPLAINT. Presumption is that court found same, if sufficient to support judgment. *Peers v. Reed*, 23 Nev. 404.
30. TECHNICAL WORDS SHOULD BE USED IN COMPLAINT. *Huguet v. Owen*, 1 Nev. 464.
31. FACTS, NOT A CONCLUSION OF LAW, SHOULD BE STATED. *Cal. Tel. Co. v. Patterson*, 1 Nev. 150.
32. APPARENT, NOT REAL, CONTRADICTION IN PLEADING. *Crow v. Van Sickle*, 6 Nev. 146.

Demurrer, Grounds For.

3135. SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either: First, that the court has no jurisdiction of the person of the defendant, or the subject of the action; or, second, that the plaintiff has not legal capacity to sue; or, third, that there is another action pending between the same parties for the same cause; or, fourth, there is a defect or misjoinder of parties, plaintiff or defendant; or, fifth, that several causes of action have been improperly united; or, sixth, that the complaint does not state facts sufficient to constitute a cause of action; or, seventh, that the complaint is ambiguous, unintelligible, or uncertain.

1. DEMURRER ADMITS truth of whatever is contained in complaint, but does not admit new facts. *Van Doren v. Tjader*, 1 Nev. 380.
2. DEMURRER—SUIT FOR DELINQUENT TAXES. Defendant has right to demurrer on any of grounds set forth in Practice Act. *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220.
3. "MISJOINDER OF CAUSES OF ACTION"—ACTION ON OFFICIAL BOND. Cause of action against principal and sureties cannot be united with cause of action for damages against principal alone. *State v. Kruttschnitt*, 4 Nev. 179.
4. MISJOINDER OF ACTIONS cannot be taken advantage of on general demurrer. *Ruhling v. Hackett*, 1 Nev. 360.
5. MISJOINDER OF PARTIES PLAINTIFF—Replevin Bond—Sheriff Not Proper Party Plaintiff. *McBeth v. Van Sickle*, 6 Nev. 134.
6. DEMURRER OVERRULED. PROPER PRACTICE is to give time to replead. *Eastabrook v. Upton*, 1 Nev. 398.

7. **JOINT DEMURRER—SEPARATE ORDERS THEREON.** A joint demurrer may be sustained as to one defendant, and overruled as to another. *Wood v. Olney*, 7 Nev. 109.
 8. **ANSWER DEFECTIVE IN FORM ONLY.** Plaintiff should demur, not move, for judgment on pleadings. Defendant should have right to amend. *Gallagher v. Dunlap*, 2 Nev. 326.
 9. **ALLEGATION BY WAY OF RECITAL—GENERAL DEMURRER INSUFFICIENT.** If a complaint states a substantial allegation only by way of recital, the defect should be objected to specifically and cannot be taken advantage of on general demurrer. *Winter v. Winter*, 8 Nev. 129.
 10. **DEMURRER PROPER PRACTICE TO DEFECTIVE COMPLAINT.** To file answer and move for judgment on pleadings irregular; must be sustained, however, when complaint is fatally defective in not stating a cause of action. *Lake Bigler R. Co. v. Bedford*, 3 Nev. 399.
 11. **TECHNICAL DEFECTS OF PLEADING—DEMURRER PROPER PRACTICE—SPIRIT OF THE CODE.** When a pleading contains a defective statement of a cause of action, as distinguished from a statement of a defective cause of action, the defect, if relied on by the opposite party, should be pointed out by demurrer, so as to afford an opportunity to amend—neither the spirit of the code nor properly speaking its practice allowing a substantial right to be cut off by a mere technical judgment without giving such opportunity. *Treadway v. Wilder*, 8 Nev. 91; *Cal. State Tel. Co. v. Patterson*, 1 Nev. 150.
 12. **DEMURRER, HOW WAIVED.** If party demur for non-joinder of parties or uncertainty, he must let final judgment be entered on demurrer. If he answers, he waives right to rely on demurrer. *Lonkey v. Wells*, 16 Nev. 271; *Hammersmith v. Avery*, 18 Nev. 225; *Gardner v. Gardner*, 23 Nev. 207; *Harden v. Emmons*, 24 Nev.
- See *Levy v. Fargo*, 6 Nev. 415.
13. **DEMURRER INSTEAD OF PLEA IN ABATEMENT—Damage for Rafting Timber.** *Mandlebaum v. Russell*, 4 Nev. 551.
 14. **DEMURRER FOR "DEFECT OF PARTIES PLAINTIFF" OR THAT "PLAINTIFF HAS NOT LEGAL CAPACITY TO SUE"** will not reach the defect of a proceeding in a name, as plaintiff, of neither a natural or artificial person. *Proprietors of Mexican Mill v. Yellow Jacket S. M. Co.*, 4 Nev. 40.

Demurrer.

3136. SEC. 41. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded.

Demurrer and Answer.

3137. SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue; or may demur and answer at the same time.

Amending Complaint.

3138. SEC. 43. If the complaint be amended, a copy of the amendment shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendment shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

Objections.

3139. SEC. 44. When any of the matters enumerated in section forty do not appear upon the face of the complaint, the objection may be taken by answer.

Waiver of Demurrer.

3140. SEC. 45. If no such objection is taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Answer, What to Contain.

3141. SEC. 46. The answer of the defendant shall contain: First—If the complaint be verified, a special denial to each allegation of the complaint, controverted by the defendant, or a denial thereof according to his information and belief; if the complaint be not verified, then a general denial to each of such

allegations; but a general denial shall only put in issue the material and express allegations of the complaint. Second—A statement of any new matter or counterclaim, constituting a defense, in ordinary and concise language.

1. **PLEADING—AFFIRMATIVE MATTER IN ANSWER CONSIDERED DENIED.** Under the practice in this state, all affirmative matter in an answer is taken as denied. *Cahill v. Hirshman*, 6 Nev. 57.
2. **GENERAL DENIAL IN SWORN ANSWER INSUFFICIENT.** *State v. W. U. Tel. Co.*, 4 Nev. 338.
3. **ANSWER INSTEAD OF PLEA IN ABATEMENT.** Defect of parties should be pleaded by answer, not plea in abatement. *Mandlebaum v. Russell*, 4 Nev. 551.
4. **MATTER IN AVOIDANCE** must be specially pleaded, or no proof can be heard. *Horton v. Ruhling*, 3 Nev. 498.
5. **FORMAL OBJECTIONS TO COMPLAINT** waived by plea of confession and avoidance. *McManus v. Ophir S. M. Co.*, 4 Nev. 15.
6. **SUFFICIENCY OF ANSWER.** Denial must be direct and not argumentative. *Gallagher v. Dunlap*, 2 Nev. 326; *Solen v. V. & T. R. Co.*, 13 Nev. 106.
7. **ANSWER MAY BE STRICKEN OUT** when frivolous, or not verified when it should be, and judgment may be rendered on complaint if defect is not cured in reasonable time. *Lehane v. Keys*, 2 Nev. 361.
8. **ANSWER MAY AID COMPLAINT.** *Hawthorne v. Smith*, 3 Nev. 182.
9. **PLEADING BY DEFENDANT ASKING AFFIRMATIVE RELIEF** must be as full as though he were a plaintiff. *Rose v. Treadway*, 4 Nev. 455.
10. **EQUITABLE CHARACTER OF ACTION NOT DESTROYED BY ANSWER DENYING TITLE.** *Lake v. Tolles*, 8 Nev. 285.
11. **ESTOPPEL MUST BE PLEADED.** An estoppel cannot be proved if it be not sufficiently pleaded. *Sharon v. Minnock*, 6 Nev. 377.
- PLEADING OF ESTOPPEL IN PARS.** In pleading facts to show an estoppel *in pars*, it is necessary to set forth every essential element of such an estoppel; and among other things that the party relying on it was influenced in his conduct by the acts or silence of the other. *Id.*; *Hanson v. Chiatovich*, 13 Nev. 395.
12. **ALLEGATION OF COMPLAINT NOT DENIED IN ANSWER** does not raise issue on that point. *Smith v. Lee*, 10 Nev. 208.
13. **INSUFFICIENT DENIAL.** *Blackie v. Cooney*, 8 Nev. 41.
14. **ADMISSION IN PLEADING DISPENSES WITH PROOF.** *Carlyon v. Lannan*, 4 Nev. 156.
15. **ANSWER OF OFFICER TO JUSTIFY SEIZURE UNDER EXECUTION—Sufficiency Of.** *McDonald v. Prescott*, 2 Nev. 109.
16. **NEW MATTER—Matter in Confession and Avoidance—Terms in Contract Not Shown by Plaintiff.** *Ferguson v. Rutherford*, 7 Nev. 385.
17. **SUFFICIENCY OF ANSWER, DELINQUENT TAX SUIT—Denial of Title Good Defense.** *State v. C. P. R. Co.*, 21 Nev. 94.
18. **EJECTMENT—PLEADING EQUITABLE DEFENSE.** A party that relies upon an equitable defense to an action of ejectment must set up in his answer the facts constituting the same or it will not be considered. *Brady v. Husby*, 21 Nev. 453.
19. **EQUITABLE DEFENSE.** Defendant may set up equitable defense to action for possession of lands. *South End M. Co. v. Tinney*, 22 Nev. 19.
20. **TITLE BY PRESCRIPTION SET UP IN ANSWER.** Objection to its sufficiency waived if not objected to. *Authors v. Bryant*, 22 Nev. 242.

Counterclaim, What May Constitute.

3142. SEC. 47. The counterclaim mentioned in the last section shall be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First—A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action. Second—In an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action.

1. **COUNTERCLAIM—HOW ESTABLISHED.** The defendant, alleging a counterclaim, must establish it to the satisfaction of the jury by a preponderance of evidence. *Margaroli v. Miligan*, 11 Nev. 96.
2. **COUNTERCLAIM—Copartnership Account—Demurrer—Action Upon Contract—Insolvency of Plaintiff.** *Foulks v. Rhodes*, 12 Nev. 225.

3. **COUNTERCLAIM.** A demand of one of several defendants cannot be pleaded as a counterclaim to a demand upon which they are jointly liable unless there is an agreement that it shall so operate. *Davis v. Noteware*, 13 Nev. 421.
4. **SET-OFF AND COUNTERCLAIM**—Claim Arising Out of Subject of Action—Sections 46 and 47 Construed. *Lapham v. Osborne*, 20 Nev. 168.

Cross Demands.

3143. SEC. 48. When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other, but the two demands be deemed compensation, so far as they equal each other.

Several Defenses May Be Set Forth.

3144. SEC. 49. The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer in a manner in which they may be intelligibly distinguished.

Demurrer to Answer.

3145. SEC. 50. The plaintiff may, within the number of days in which the defendant is by the summons required to answer, said days to be computed from the time of the service on the plaintiff of a copy of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also, within the same time, demur to one or more of the defenses set up in the answer. Sham and irrelevant answers and defenses, and so much of any answer as may be irrelevant, redundant, or immaterial may be stricken out on motion, and upon such terms as the court, in its discretion, may impose.

Pleadings to Be Subscribed—When to Be Verified.

3146. SEC. 51. Every pleading shall be subscribed by the party or his attorney, and when the complaint is verified by affidavit the answer shall be verified also, except as provided in the next section.

ANSWER—WHEN VERIFIED, SHOULD NOT DENY TRUE ALLEGATIONS. A verified answer should not deny facts unquestionably true. Parties doing so lay themselves liable to the penalties of the criminal law. *Roeder v. Stein*, 23 Nev. 92.

Verification Omitted, When.

3147. SEC. 52. The verification of the answer required in the last section may be omitted when an admission of the truth of the complaint might subject the party to prosecution for felony.

Written Instrument.

3148. SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

Defense, Written Instrument.

3149. SEC. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the plaintiff file with the Clerk, five days after the service of the answer, an affidavit denying the same.

Verification of Pleadings, by Whom Made.

3150. SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorneys reside, or from some cause unable to verify it, or the facts are within the

knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; or when the state, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts; except that in actions prosecuted by the Attorney-General, in behalf of the state, the pleadings need not, in any case, be verified.

1. **SECTION 55 CONSTRUED—PROPER PRACTICE DEFECTIVE VERIFICATION OF ANSWER.** Defendant should be allowed to correct error if he desires to do so. *Heintzelman v. L'Amoureux*, 3 Nev. 377.
2. **VERIFICATION OF COMPLAINT—SUFFICIENCY OF.** Where averments are positive and nothing stated on "information and belief," omission of words "except as to those matters which are stated on information and belief," etc., not defective. *Kelly v. Kelly*, 18 Nev. 49.

Items of Account.

3151. SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party within five days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a Judge thereof, may order a further account when the one delivered is too general, or is defective in any particular.

Irrelevant Matter.

3152. SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court, on motion of any person aggrieved thereby.

Real Property to Be Described.

3153. SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint, or with other equal certainty.

Judgment, How Plead.

3154. SEC. 59. In pleading a judgment or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

1. **JUDGMENT MUST BE ALLEGED IN PLEADING.** Without such allegation proof of judgment or proceeding of court of limited jurisdiction not admissible. *Keys v. Grannia*, 3 Nev. 548.
2. **EXISTENCE OF JUDGMENT CANNOT BE SHOWN BY PAROL TESTIMONY—Action on Promissory Note.** *Davis v. Noteware*, 13 Nev. 421.

Performance of Contract, How Plead.

3155. SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Private Statutes, How Plead.

3156. SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Libel or Slander, Pleadings.

3157. SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it shall be sufficient to state generally that the same was published or

spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

Truth May Be Alleged.

3158. SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of the damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

LABEL—PLEADINGS. Intent and motive of defendant may be shown to reduce damages. Thompson v. Powning, 15 Nev. 185.

When Several Causes of Action May Be United.

3159. SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of: First, contracts, express or implied; or, second, claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or, third, claims to recover specific personal property, with or without damages for the withholding thereof; or, fourth, claims against a trustee, by virtue of a contract, or by operation of law; or, fifth, injuries to character; or, sixth, injuries to person; or, seventh, injuries to property. But the causes of action so united shall all belong to only one of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated; *provided, however,* that an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person.

Allegations, When Deemed Controverted.

3160. SEC. 65. Every material allegation of the complaint, when it is verified, not specifically controverted by the answer, shall for the purpose of the action be taken as true. The allegation of new matter in the answer shall on the trial be deemed controverted by the adverse party.

Material Allegations.

3161. SEC. 66. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

Answer After Demurrer.

3162. SEC. 67. After demurrer and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to of course,

Section 67. After demurrer and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to, of course, and may amend any demurrer, and without costs, filing the same as amended, and serving a copy thereof upon the adverse party or his attorney, who shall have ten days to answer or demur thereto if the pleading be a complaint, or to demur thereto if it be an answer; but a party shall not so amend more than once. When a demurrer to a complaint is overruled, and there is no answer filed, the court may, upon such terms as shall be just, allow the defendant to file an answer. If the demurrer to the answer be overruled, the facts alleged in the answer shall still be construed as denied.

Pleading or demurrer, how amended.

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7. **AMENDMENT OF COMPLAINT.** That it will deprive defendant of right to plead statute of limitations is no reason why it should not be allowed. *Tucker v. Mayor, et al.*, 4 Nev. 20.
8. **PLEADING, SUFFICIENCY OF—ON MOTION TO QUASH—RULING OF COURT BELOW, FOLLOWED BY APPELLATE COURT.** Where, on a motion to quash which amounted to a demurrer, the trial court held the complaint sufficient, justice requires that the appellate court should do the same, as otherwise the pleader would lose all right of amendment. *Schneider v. Bray*, 22 Nev. 272.

Amendment of Pleadings—Answer After Default.

3163. SEC. 68. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may upon like terms enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may upon like terms allow an answer to be made after the time limited by this Act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect; and when, from any cause, the summons, and a copy of the complaint in an action have not been personally served on the defendant, the court may allow on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

1. **SECTION 68.** Should be full stop after words "excusable neglect." *Howe v. Coldren*, 4 Nev. 171.

OPENING DEFAULT—Affidavit of Merits—Practice as to Opening Defaults. *Id.*

2. **MOTION TO SET ASIDE DEFAULT—AFFIDAVIT OF MERITS BY ATTORNEY** is sufficient, when it shows that he is familiar with all of the facts in the case. *Horton v. New Pass G. & S. M. Co.*, 21 Nev. 184.

WHEN MOTION SHOULD BE MADE. An application to open a default should be made immediately. *Id.*

3. **SECTION 68 DOES NOT EXTEND** to Case Where Court Has Lost Jurisdiction by Lapse of Time—*Nunc Pro Tunc* Order. *Killip v. Empire M. Co.*, 2 Nev. 34.
4. **TECHNICAL MISTAKE.** Section 68 is intended for benefit of those only who have meritorious defense, and who have complied with the law; and not for those who offer a mere technical excuse. *Jones v. San Francisco Sulphur Co.*, 14 Nev. 172.
5. **DEFAULT SHOULD NOT BE SET ASIDE FOR MERE TECHNICAL DEFENSE.** Judgment entered by default should not be set aside on affidavit which does not show that defendant has a good and meritorious defense to the action. *Ewing v. Jennings*, 15 Nev. 379.
6. **DEFAULT—POWER OF COURT TO SET ASIDE—Where Appearance Is Entered by Unauthorized Attorney.** *Stanton-Thompson Co. v. Craine*, 24 Nev.
7. **DEFAULT—Excusable Negligence—Affidavit of Merits by Attorney.** *State v. C. V. & C. M. Co.*, 13 Nev. 195.
8. **JOINT JUDGMENT—LAPSE OF TERM—MOTION TO SET ASIDE.** On motion of one joint defendant judgment may be set aside as to both. *Stevenson & Son v. Mann & Smith*, 13 Nev. 268.
9. **AMENDMENT OF AFFIDAVIT—WHEN ALLOWED.** Courts should be liberal in allowing amendments. *Elder v. Frevert*, 18 Nev. 278.
10. **COURT SHOULD EITHER GRANT LEAVE TO AMEND OR DISMISS ACTION WITHOUT PREJUDICE** when complaint so defective as not to state cause of action. *Horton v. Ruhling & Co.* 3 Nev. 498.
11. **AMENDMENT—Discretionary Power of Court.** *McCausland v. Ralston*, 12 Nev. 195.
12. **ALLOWANCE OF ANSWER AFTER TIME GENERALLY MATTER OF DISCRETION.** Especially so where there has been no default entered, and there is no showing that a failure to plead has occasioned any delay or injury to the opposite party. *Conley v. Chedic*, 7 Nev. 336.
13. **AMENDMENT OF COMPLAINT—DISCRETION OF TRIAL COURT.** An amendment of the *ad damnum* clause of the complaint, by increasing the amount claimed, is a matter within the discretion of the trial Judge, and may be allowed during the trial. *Shields v. Orr Ditch Co.*, 23 Nev. 349.

14. **AMENDMENT OF PLEADING UNDER SECTION 68.** Courts have power to amend in furtherance of justice, but rights and liabilities of third parties must not be changed. *Quillen v. Arnold*, 12 Nev. 234.
15. **AMENDMENT TO PLEADINGS.** If evidence is objected to because the pleadings are defective, court should allow the pleadings to be amended. *Jeffree v. Walsh*, 14 Nev. 140.
16. **AMENDMENT OF COMPLAINT AFTER FINDINGS ARE MADE—When Not Allowable.** *Marshall v. Golden Fleece M. Co.*, 16 Nev. 156.
- AMENDMENTS DURING TERM.** Court may amend orders of record concerning extension of time, so as to conform to the truth, any time during term. *Id.*
17. **AMENDMENT AFTER ADJOURNMENT OF TERM** cannot be made unless there is something in record to amend by. *Clark v. Strouse*, 11 Nev. 76.
18. **WHEN DEFAULT IMPROPERLY TAKEN.** Defendant should apply to court during term for relief. *Kidd v. Four-Twenty M. Co.*, 3 Nev. 381.
19. **JURISDICTION OF COURT AFTER EXPIRATION OF TERM.** The district court has no jurisdiction at a subsequent term to set aside a default or vacate a decree or judgment rendered at a previous term of court unless its jurisdiction is saved by some proper proceeding instituted within the time allowed by law. *Daniels v. Daniels*, 12 Nev. 118; *State v. Bank of Nevada*, 4 Nev. 358; *State v. Fourth Judicial District Court*, 16 Nev. 371; *Lang Syne M. Co. v. Ross*, 20 Nev. 127.

Defendant's Name Not Known.

3164. SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding may be amended accordingly.

Pleadings Construed.

3165. SEC. 70. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Error, When Disregarded.

3166. SEC. 71. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

1. **PLEADING CONSTRUED LIBERALLY.** The rule of construing pleadings most strongly against the pleader has been changed. For the purposes of determining its effect, a pleading should be liberally construed. *Ferguson v. V. & T. R. Co.*, 13 Nev. 184.
2. **CONSTRUCTION OF PLEADING—Mandamus.** *Flagg v. Trustees Lady Bryan M. Co.*, 4 Nev. 400.
3. **CONSTRUCTION OF PLEADING.** Sections 70 and 71 have liberalized the rules of construction applicable to pleadings so as not only to embrace the whole of the English statutes of jeofailles and amendments, but to go somewhat beyond. *McManus v. Ophir Co.*, 4 Nev. 15.
4. **ANSWER MAY BE HELD TO AID THE COMPLAINT AND SUSTAIN THE ACTION.** *Hawthorne v. Smith*, 3 Nev. 182.
5. **TECHNICAL ERROR DISREGARDED—Notice Not Properly Served, but Purpose Accomplished.** *Lake v. Lake*, 16 Nev. 363.

TITLE V.

Of the Provisional Remedies in Civil Actions.

CHAPTER 1—ARREST AND BAIL.

Arrest in Civil Cases.

3167. SEC. 72. No person shall be arrested in a civil action except as prescribed by this Act.

Ex Parte Bergman, 18 Nev. 331.

When May Be Made.

3168. SEC. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with

intent to defraud his creditors, or when the action is for libel or slander. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in professional employment, or for a willful violation of duty. Third—In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the Sheriff. Fourth—When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought. Fifth—When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for Arrest.

3169. SEC. 74. An order for the arrest of the defendant shall be obtained from a Judge of the court in which the action is brought.

Affidavit Necessary for Arrest.

3170. SEC. 75. The order may be made whenever it shall appear to the Judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and the case is one of those mentioned in section seventy-three. The affidavit shall be either positive or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the Clerk of the Court.

To Give Undertaking.

3171. SEC. 76. Before making the order the Judge shall require a written undertaking, payable in gold coin of the United States, on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident and householder or freeholder within the state, and worth double the sum specified in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the Clerk of the Court.

When Order May Be Made.

3172. SEC. 77. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the Sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, naming the money or currency in which it is payable, and to return the order at a time therein mentioned to the Clerk of the court in which the action is pending.

Duty of Sheriff.

3173. SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the Sheriff, who, upon arresting the defendant, shall deliver to him the copy of the affidavit, and also, if desired, a copy of the order of arrest.

How Executed.

3174. SEC. 79. The Sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law.

Sections 80-85, inclusive, made applicable to justice's courts by Section 527 of this Act.

How Discharged.

J. C.

3175. SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest in the money or currency therein named, as provided in this chapter.

Bail, How Given.

J. C.

3176. SEC. 81. The defendant may give bail by causing a written undertaking, payable in the money of the contract (if any be named), and in other cases as directed by the Judge, to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Bail May Surrender Defendant.

J. C.

3177. SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the Sheriff of the county where he was arrested.

Bail May Arrest Defendant.

J. C.

3178. SEC. 83. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged, may themselves arrest him; or, by a written authority, indorsed on a certified copy of the undertaking, may empower the Sheriff to do so. Upon the arrest of the defendant by the Sheriff, or upon his delivery to the Sheriff by the bail, or upon his own surrender, the bail shall be exonerated; *provided*, such arrest, delivery, or surrender shall take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

Judgment Against Bail.

J. C.

3179. SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

Bail, How Exonerated.

J. C.

3180. SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process.

Proceedings After Arrest.

3181. SEC. 86. Within the time limited for that purpose, the Sheriff shall file the order of arrest in the office of the Clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the Sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the Clerk of the Court.

Notice of Justification of Bail.

3182. SEC. 87. Within five days after the receipt of notice, the Sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before the Judge of the Court, or Clerk, at a specified time and place; the

time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Qualifications of Bail.

3183. SEC. 88. The qualifications of bail shall be as follows: First—Each of them shall be a resident and householder, or freeholder, within the county. Second—Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the Judge, or Clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Bail, How to Justify.

3184. SEC. 89. For the purpose of justification, each of the bail shall attend before the Judge, or Clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the Judge, or Clerk, in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of Bail.

3185. SEC. 90. If the Judge, or Clerk, find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the Sheriff shall thereupon be exonerated from liability.

Deposit in Lieu of Bail.

3186. SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case the Sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Disposition of Deposits—Liability of Sheriff.

3187. SEC. 92. The Sheriff shall, immediately after the deposit, pay the same into court, and take from the Clerk receiving the same two certificates of such payment; the one of which he shall deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff to collect the sum deposited as in other cases of delinquency.

Bail After Deposit.

3188. SEC. 93. If the money be deposited, as provided in the last two sections, bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the Clerk, the money deposited shall be refunded by such Clerk to the defendant.

Deposit May Be Applied on Judgment.

3189. SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the Clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the Clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

Liability of Sheriff.

3190. SEC. 95. If, after being arrested, the defendant escape or be rescued, the Sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Judgment Against Sheriff.

3191. SEC. 96. If a judgment be recovered against the Sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Vacating Order of Arrest.

3192. SEC. 97. A defendant arrested may, at any time before the justification of bail, apply to the Judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

Vacation of Order—Reduction of Bail.

3193. SEC. 98. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated, or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER 2—CLAIMS AND DELIVERY OF PERSONAL PROPERTY.**When Claim May Be Made.**

J. C.

3194. SEC. 99. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Sections 99 to 102, inclusive, are made applicable to justices' courts by Section 527 of this Act.

1. **WHEN REPLEVIN LIES.** As a general principle the owner of a chattel may take it by replevin from any person whose possession is unlawful, unless it is in the custody of the law or unless it has been taken by replevin from him by the party in possession. *Buckley v. Buckley*, 9 Nev. 373.

DESCRIPTION OF PROPERTY IN REPLEVIN. In replevin the description of the property must be so clear that an officer can identify it. *Id.*

REPLEVIN OF GOODS IN HANDS OF PLAINTIFF IN OTHER REPLEVIN. Where personal property in the hands of the plaintiff in a suit of claim and delivery is claimed by a third person, the latter is not obliged to intervene in the pending action, but may institute an original action of claim and delivery. *Id.*

2. **RIGHT TO MAINTAIN REPLEVIN.** In an action for the recovery of specific personal property, it is necessary for the plaintiff to show that he is entitled to the immediate possession. *Hilger v. Edwards*, 5 Nev. 85.

3. **REPLEVIN—PRACTICE.** When the plaintiff in an action of replevin has introduced evidence showing that he had purchased the property and became vested with the legal title thereto, the defendants cannot raise the question of fraud in the sale, or of want of delivery, until they have shown some right or interest in the property, or some lien upon it that entitles them to attack the sale. *West v. Humphrey*, 21 Nev. 80.

4. **ACTION OF REPLEVIN—DEMAND NOT NECESSARY.** Not indispensably necessary to show a demand upon the defendant to return the property before suit brought. A demand serves no purpose, except to establish a conversion or a wrongful detention. *Perkins v. Barnes*, 3 Nev. 557, approved; *Whitman M. Co. v. Tritle*, 4 Nev. 494.

5. **DEMAND NOT NECESSARY IN TROVER.** *Ward v. C. R. W. Co.*, 13 Nev. 45.

6. **DEMAND—When Not Necessary.** *Hanson v. Chiatovich*, 13 Nev. 395.

7. **REPLEVIN—MEASURE OF DAMAGES IN—VALUE OF PROPERTY INVOLVED IN—FLUCTUATION OF VALUATION DURING LITIGATION.** When the value of the cattle—the subject of the litigation—had fluctuated during the pendency of the action, an instruction that plaintiff could recover the highest value between the taking and the trial was erroneous. The value at the time of the trial is the only competent indemnity. *Gardner v. Brown*, 22 Nev. 156.

REPLEVIN—Recovery of Possession Primary Object Of. *Id.*

8. **FORM OF JUDGMENT IN REPLEVIN.** An absolute judgment for value, not allowing defendant to satisfy judgment by return of property with costs and damages, is erroneous. *Lambert v. McFarland*, 2 Nev. 58.

9. **REPLEVIN—Gift From Deceased Person Set up by Defendant—Declaration of Party as Part of *Res Gestæ*.** *Rollins v. Stout*, 6 Nev. 150.
10. **QUESTIONS INVOLVED ON REPLEVIN AGAINST A UNITED STATES MARSHAL.** Where a replevin suit was commenced in a state court against a Marshal for goods seized by him under attachment process from a United States court: *Held*, that the state court could not extend its inquiry beyond the question as to whether the federal process was valid; and if so, that the question of title to the goods was irrelevant. *Feusier v. Lammon*, 6 Nev. 209.
If the goods have been taken from the Marshal, court has jurisdiction to return them to him. *Id.*
11. **VERDICT IN REPLEVIN—Requisites—Judgment and Execution.** *Carson v. Applegarth*, 6 Nev. 187.
12. **PRIMARY OBJECT OF ACTION OF REPLEVIN.** The recovery of damages in a proper case is as much a primary object of the action of replevin as is the recovery of the property in specie. *Buckley v. Buckley*, 12 Nev. 423.
- REPLEVIN FOR SHEEP—Right to Recover Increase and Wool—Indemnity.** *Id.*
13. **MEASURE OF DAMAGES—ACTION OF TROVER.** Value of the article when converted, with interest on that value to the time of trial. *O'Meara v. North American M. Co.*, 2 Nev. 112.
Rule explained at length. *Id.*; approved in *Carlyon v. Lannan*, 4 Nev. 156; *Ward v. C. R. W. Co.*, 13 Nev. 44.
14. **REPLEVIN FOR TIMBER CUT—TENANTS IN COMMON.** Where one tenant in common sells the right to a stranger to cut timber off of the common property, another tenant in common of the same property cannot maintain replevin for the timber after it has been cut. *Alford v. Bradlen*, 1 Nev. 223.
15. **TROVER FOR WOOD CUT—Title to Land, When Immaterial—Place and Time of Conversion—Liability of Bailee.** *Ward v. C. R. W. Co.*, 13 Nev. 45.
16. **TROVER—ALLEGATION OF VALUE MATERIAL.** If not denied it need not be proven. *Hixon v. Pixley*, 15 Nev. 475.
- TIME OF CONVERSION IMMATERIAL—NOTICE AND DEMAND—INSTRUCTION.** *Id.*
17. **TROVER FOR MINING STOCK AGAINST ASSIGNEES FOR BENEFIT OF CREDITORS.** *Boylan v. Huguet*, 8 Nev. 345.
18. **TROVER—Form of Verdict—Surplusage, etc.** *Swan v. Smith*, 13 Nev. 257.

Affidavit of Claim, What to Contain.

J. C.

3195. SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First—That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second—That the property is wrongfully detained by the defendant. Third—The alleged cause of the detention thereof according to his best knowledge, information, and belief. Fourth—That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; and, Fifth—The actual value of the property.

Delivery, How Made.

J. C.

3196. SEC. 101. The plaintiff or his attorney may thereupon, by indorsement in writing upon the affidavit, require the Sheriff of the county where the property claimed may be, to take the same from the defendant.

Undertaking Necessary for Delivery.

J. C.

3197. SEC. 102. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Sheriff, to the effect that they are bound to the defendant in double the value of the property, in gold coin of the United States, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, in gold coin of the United States, the Sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and

undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest postoffice, directed to the defendant.

Sureties Excepted To.

3198. SEC. 103. The defendant may, within two days after the service of a copy of the affidavit and the undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the Sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Defendant May Require Return—Undertaking.

J. C.

3199. SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, in gold coin of the United States, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to him of such sum, in gold coin of the United States, as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

Section 104 and Sections 107 to 110, both inclusive, are made applicable to justices' courts by Section 527 of this Act.

Justification of Sureties.

3200. SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, shall justify before the Judge or the Clerk in the same manner as upon bail on arrest; and upon such justification, the Sheriff shall deliver the property to the defendant. The Sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualifications of Sureties.

3201. SEC. 106. The qualifications of sureties and their justification shall be such as are prescribed by this Act in respect to bail upon an order of arrest.

Property Concealed.

J. C.

3202. SEC. 107. If the property, or any part thereof, be concealed in a building or inclosure, the Sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession, and, if necessary, he may call to his aid the power of his county.

Sheriff to Keep Property.

J. C.

3203. SEC. 108. When the Sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving his lawful fees for taking and necessary expenses for keeping the same.

Claimed by Other Person, Effect Of.

J. C.

3204. SEC. 109. If the property taken be claimed by any other person than

enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

ACTION AGAINST SURETIES—Injunction Bond—Sufficiency of Complaint. *Rosendorf v. Mandel*, 18 Nev. 129.

DEMAND, WHEN NOT NECESSARY. *Id.*

DAMAGES—Recoverable from Sureties on Injunction Bond. *Id.*

Order for Hearing Before Granting Injunction.

3211. SEC. 116. If the court or Judge deem it proper that the defendant, or any of several defendants, should be heard, before granting the injunction, an order shall be made fixing a time and place for hearing the application for the injunction, a copy of which order shall be served upon the person or persons designated therein, and the defendant may in the meantime be restrained. Upon the hearing, the parties may use affidavits, other written evidence, and oral testimony.

Injunction to Suspend Business—Notice.

3212. SEC. 117. An injunction or restraining order to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to be served in the manner prescribed for service of the summons in the action.

Application to Dissolve or Modify Injunction, How Made.

3213. SEC. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the Judge who granted the injunction, or to the court in which the action is pending, or a Judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit or affidavits on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavit, or other evidence, on the part of the defendant, but not otherwise the plaintiff may oppose the same by affidavits or other evidence in addition to the affidavits on which the injunction was granted, and the defendant may then, in proper cases, introduce rebutting affidavits or other evidence; *provided*, that for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

Supreme Court May Prescribe Rules.

3214. SEC. 119. The supreme court may prescribe by rule the time when and the cases in which the service of affidavits to be used upon applications for injunctions, and motions to dissolve injunctions, shall be made; and may also provide by rule for the giving of notice before such hearing of the kind of testimony to be used, and make all needful rules on the subject of injunctions not in conflict with this or other Acts.

Injunction Refused or Dissolved—Bond Given, When—Receiver.

3215. SEC. 120. If, upon the hearing of an application for an injunction, or for the dissolution of an injunction, it does not satisfactorily appear that there is a sufficient cause for an injunction, or if it appear that the extent of the injunction is too great, it shall be refused, dissolved, or modified, as the case may be, and upon all such applications, in actions respecting mines, or in actions respecting or involving the question of the irrigation of lands, the court or Judge hearing the same may, instead of granting or continuing the injunction, make an order requiring the party against whom the application is made, to give a bond in an amount fixed by such court or Judge, with sufficient sureties, to be approved by such court or Judge, conditional for the payment to the plaintiff of all damages which he may sustain by reason of the use or occupation of the mine or other acts complained of by the party giving the bond, his or its agents, servants,

employees, grantees or other persons by his or its consent, pending the litigation. If the plaintiff finally recover, or that upon failure to give such bond within the time prescribed in the order, the injunction shall be granted or continued, as the case may be, or the court or Judge may appoint a receiver to take charge of the mine, or the proceeds thereof, pending litigation. *As amended, Stats. 1887, 91.*

1. DISTRICT COURT HAS THE POWER TO APPOINT A RECEIVER, on an ex parte application, when a proper showing is made, as in this case. *Maynard v. Bailey, 2 Nev. 313.*

COURT WILL APPOINT RECEIVER, when one partner excludes his copartner from a participation in the affairs of the partnership. So, too, when both partners have assigned their respective interests, and the assignees cannot agree. *Id.*

When suit is brought and summons issued, the court has power to appoint a receiver before the summons is served on defendants. But the appointment of a receiver ought not to be made without notice, except in cases of emergency. *Id.*

2. INJUNCTION, WHEN TO BE DISSOLVED—DENIAL OF EQUITIES. An injunction granted upon a complaint, the allegations of which have been fully and fairly denied by the answer, should on motion and in the absence of further showing be dissolved, unless in exceptional cases when good reason appears for continuing it. *Magnet v. P. & P. S. M. Co., 9 Nev. 346.*

MOTION TO DISSOLVE INJUNCTION ON COMPLAINT AND ANSWER. On a motion to dissolve an injunction, heard upon complaint and answer alone, the full and fair denials of the answer are taken as true. *Id.*

3. WHERE NO EVIDENCE TO SUSTAIN COMPLAINT, INJUNCTION MUST BE DISSOLVED. Where the main allegations of a complaint for injunction, made upon information and belief, were fully and positively denied by the answer; and on motion to dissolve an injunction granted thereon without notice, the evidence entirely failed to sustain any of the material allegations of the complaint: *Held*, that a denial of such motion was too erroneous to admit of discussion. *Perley v. Forman, 7 Nev. 309.*

Bond Instead of Dissolution.

3216. SEC. 121. It shall be good cause, in the discretion of the court or Judge, for the dissolution of an injunction that the plaintiff is doing, or causing, or permitting to be done, some act pending the litigation which, if continued, will be injurious to the defendant if he finally recover, or to the property in dispute. But the court or Judge hearing a motion to dissolve an injunction may, instead of granting such motion, direct by order that the plaintiff give to the parties restrained a bond conditioned, as provided in section one hundred and twenty, or upon his failure to do so within the time prescribed in such order, that the injunction shall be dissolved.

Gold Coin.

3217. SEC. 122. All undertakings and bonds provided for in this chapter shall be made payable in gold coin of the United States.

CHAPTER 4—ATTACHMENT.

Attachment of Property of Defendant, for What Allowed.

J. C.

3218. SEC. 123. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered.

First—In an action upon a judgment or upon a contract, *made 1907*
expressed or implied, for the direct payment of money, *P. 105*
which is not secured by mortgage, lien or pledge upon real
or personal property situated or being in this State, and if so
secured when such security has been rendered nugatory by
the act of the defendant.

Third—In an action by a resident of this state for the recovery of the value of property, where such property has been converted by a defendant without the consent of the owner.

Fourth—Where a defendant has absconded, or is about to abscond, with the intent to defraud his creditors.

Fifth—Where a defendant conceals himself so that service of summons cannot be made upon him.

Sixth—Where a defendant is about to remove his property, or any part thereof, beyond the jurisdiction of the court, with the intent to defraud his creditors.

Seventh—Where a defendant is about to convert his property, or any part thereof, into money, with the intent to place it beyond the reach of his creditors.

Eighth—Where a defendant has assigned, removed, disposed of, or is about to dispose of his property, or any part thereof, with the intent to defraud his creditors.

Ninth—Where a defendant has fraudulently or criminally contracted the debt or incurred the obligation for which suit has been commenced. *As amended, Stats. 1887, 55.*

Sections 123 to 144, inclusive, are made applicable to justices' courts by Section 527 of this Act.

1. ATTACHMENT FOR FRAUD—Sufficiency of—When May Issue. *Bowers v. Beck*, 2 Nev. 139.
 2. IDEM—LIABILITY CRIMINALLY INCURRED—RAPE—STATUTE 1887, 55, CONSTRUED. Under the provisions of the amended act allowing an attachment where the liability was criminally incurred, an attachment will lie where the cause of action arose out of a rape on plaintiff's daughter. *Kuehn v. Paroni*, 20 Nev. 203.
 3. ATTACHMENT UPON ACCOUNT FOR GREATER AMOUNT THAN IS ACTUALLY DUE—When Not Constructive Fraud—Subsequent Attaching Creditors. *Mendes v. Freiters*, 16 Nev. 388.
- AMENDMENT—Effect Upon Attachment—Intervenors. *Id.*

Clerk to Issue Writ of Attachment.

J. C.

3219. SEC. 124. The Clerk of the Court shall issue the writ of attachment upon receiving and filing an affidavit by or on behalf of the plaintiff showing the nature of the plaintiff's claim, that same is just, the amount which the affiant believes the plaintiff is entitled to recover, and the existence of any one of the grounds for an attachment enumerated in the preceding section. *As amended, Stats. 1887, 55.*

1. AFFIDAVIT. Great strictness in the form of affidavit should not be required. The defendant is protected by bond. *Bowers v. Beck*, 2 Nev. 139.
2. AFFIDAVIT MADE ON ONE DATE AND FILED SEVERAL DAYS LATER. *Held*, sufficient to justify issuance of writ. *O'Neil v. N. Y. & S. P. Co.*, 3 Nev. 141.
3. AFFIDAVIT DEFECTIVE—Cannot Be Shown in Collateral Proceeding. *Moresi v. Swift*, 15 Nev. 215.

LIEN OF ATTACHMENT—When Superior to Lien of Chattel Mortgage. *Id.*

4. AFFIDAVIT INSUFFICIENT—PLEA IN ABATEMENT. Insufficiency of affidavit cannot be taken advantage of after plea in abatement. Such plea is a waiver of all defects in affidavit. *Williams v. Glasgow*, 1 Nev. 533.
 5. ATTACHMENT—RIGHT OF PROPERTY. Wood cut by contractor not attachable as his property. *Hilger v. Edwards*, 5 Nev. 84.
 6. SUNDAY—ATTACHMENT. An attachment suit can be commenced and the writ served on Sunday whenever the plaintiff, or some person in his behalf, makes the affidavit required by Section 50 of the Act concerning courts of justice. *Levy v. Elliot*, 14 Nev. 435.
- Clerical Mistake Disregarded. *Id.*
7. BILL OF SALE SUBSEQUENT TO ATTACHMENT—NOT ADMISSIBLE IN EVIDENCE. Question is, whether property was subject to attachment. *Tognini v. Kyle*, 17 Nev. 209.

Undertaking Required Before Writ Issues.

J. C.

3220. SEC. 125. Before issuing the writ the Clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, not exceeding the amount claimed by the plaintiff, in gold coin of the United States, with sufficient sureties, to the effect that if the defendant recover judgment the plaintiff will pay, in gold coin of the United States, all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

1. ATTACHMENT—INDEMNITY BOND—Sufficiency of Complaint in Action on Bond. *Gaudette v. Roeder*, 13 Nev. 344.
2. VALIDITY OF UNDERTAKING cannot be raised collaterally. *Moresi v. Swift*, 15 Nev. 215.

Requirement of Writ.

J. C.

3221. SEC. 126. The writ shall be directed to the Sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, in the money or currency of the contract, in which case to take such undertaking. Several writs may be issued at the same time to the Sheriffs of different counties.

1. WRIT MUST BE SERVED BY SHERIFF OF COUNTY WHERE PROPERTY IS SITUATED. *Sadler v. Tatti & Co.*, 17 Nev. 429.

2. RELEASE OF ATTACHED PROPERTY—Sufficient Consideration for Undertaking—Title of Court Omitted. *Lightle v. Berning*, 15 Nev. 389.

UNDERTAKING—Not Special Promise to Answer for the Debt, Default or Miscarriage of Another. *Id.*

3. UNDERTAKING TO PREVENT LEVY—When Sureties Not Liable. *Laveaga v. Wise*, 13 Nev. 296.

What May Be Attached.

J. C.

3222. SEC. 127. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this state of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Writ of Attachment, How Executed.

J. C.

3223. SEC. 128. The Sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section one hundred and twenty-six be not given, as follows: First—Real property shall be attached by leaving a copy of the writ with the occupant thereof; or, if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the Recorder of the county. Second—Personal property capable of manual delivery shall be attached by taking it into custody. Third—Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the President, or other head of the same, or the Secretary, Cashier, or managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Fourth—Debts and credits, and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

SEIZURE BY SHERIFF OF GOODS ATTACHED BY A CONSTABLE. Where a Sheriff seized and sold on execution out of a district court goods which were held by a Constable on attachment out of a justice's court: *Held*, that the Sheriff though he was responsible to the Con-

that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover. The word answer used in this section shall be construed to include any pleading that raises an issue of law or fact, whether the same be by general or special appearance.

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J. C.
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CHAP. CLXXXIX.—*An Act making any banker, or any officer, agent, or clerk of any bank, receiving deposits, knowing that said bank is insolvent, guilty of embezzlement, and providing for the punishment thereof.*

Liability of Other Persons for Property.

J. C.

3225. SEC. 130. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the last two sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Examination of Person Respecting Credits, etc.

J. C.

3226. SEC. 131. Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court, or Judge, or a referee appointed by the court or Judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or Judge may, after such examination, order personal property capable of manual delivery to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

1. PROCEEDING UNDER SECTION 131—Order of Court Not Reviewable on Certiorari. *Birchfield v. Harris*, 9 Nev. 382.

2. ATTACHMENT SUIT—ORDER UPON DEFENDANT TO DELIVER UP STOCK. Where a defendant in an attachment suit was examined under Section 131 of the Practice Act; and on its appearing that his only property subject to attachment consisted of mining stock which he had upon his person, the District Judge ordered it to be delivered to the Sheriff, to be held subject to the result of the suit: *Held*, that such order was not in excess of the jurisdiction of the District Judge. *Bivins v. Harris*, 8 Nev. 153.

CONSTRUCTION OF PRACTICE ACT, SECTION 131—EXTENT OF "EXAMINATION." The examination of the defendant, provided for in Section 131 of the Practice Act, contemplates the examination of the defendant not only as a witness in a proceeding against a garnishee but in a direct proceeding against himself; and it authorizes a discovery of property concealed upon his own person and an application of it to his just debts. *Id.*

Return of Sheriff.

J. C.

3227. SEC. 132. The Sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request at the time of service the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Perishable Property to Be Sold—Debts to Be Collected.

J. C.

3228. SEC. 133. If any of the property attached be perishable, the Sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The Sheriff's receipt shall be a sufficient discharge for the amount paid.

PERISHABLE PROPERTY, WHAT. The term "perishable property" (Practice Act, Sec. 133) applies only to property which is necessarily subject to immediate decay. *Newman v. Kane*, 9 Nev. 234.

Property Claimed by Third Party.

J. C.

3229. SEC. 134. If any personal property attached be claimed by a third

person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect, as in case of a claim after levy upon execution.

Judgment, How Satisfied—Notice of Sale.

J. C.

3230. SEC. 135. If judgment be recovered by the plaintiff, the Sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or a claimant, as hereinafter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose: First, by paying to the plaintiff the proceeds of all sales of perishable property sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment; second, if any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Balance After Satisfaction, Disposition Of.

J. C.

3231. SEC. 136. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the Sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Execution Returned Unsatisfied.

J. C.

3232. SEC. 137. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section one hundred and twenty-six, or section one hundred and forty, or he may proceed as in other cases upon the return of an execution.

Judgment Against Plaintiff—Undertaking to Be Delivered to Defendant.

J. C.

3233. SEC. 138. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

1. **DISSOLUTION OF ATTACHMENT.** Order of court refusing to vacate and dismiss attachment is a nullity. *Ranft v. Young*, 21 Nev. 401.

PENDING OF NEW TRIAL. The fact that there was a new trial pending did not tend to keep the attachment in force. *Id.*

IDEM—REMEDY OF DEFENDANT. In such case defendant's remedy was a proceeding against the Sheriff, on his refusal to deliver the property, to recover it or its value. *Id.*

2. **DISSOLUTION OF ATTACHMENT—PROCEEDINGS IN BANKRUPTCY.** The adjudication of bankruptcy dissolves an attachment and vests the title to the property in the assignee. The Sheriff is not thereafter entitled to recover any costs for keeping the property. *Baker v. McLeod*, 14 Nev. 148.

3. **SHERIFF MUST PRESERVE ATTACHED PROPERTY.** When a Sheriff attaches personal property he is not allowed, under the statute, to consider the element of expense in its preservation or keeping, but is bound to have it ready to be disposed of according to the judgment, unless compelled to sell on account of its being perishable; and it is no excuse for a failure to have it so ready that the best interests of the parties were subserved by a sale. *Newman v. Kane*, 9 Nev. 234.

Application for Discharge of Attachment.

J. C.

3234. SEC. 139. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the Judge thereof, for an order to discharge the attachment,

wholly or in part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts, or credits attached, as the case may be. All the proceeds of sales and moneys collected by the Sheriff, and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff.

DISSOLUTION OF ATTACHMENT—AFFIDAVIT ON MERITS. Where an attachment is issued under a statute, allowing the writ where the liability was criminally incurred, an affidavit denying the averments of plaintiff's complaint constituting the cause of action will not support a motion to dissolve, as that would necessitate a decision on the merits. *Kuehn v. Paroni*, 20 Nev. 203.

Undertaking of Defendant on Granting Discharge.

J. C.

3235. SEC. 140. On granting such order, the court or the Judge shall require an undertaking on behalf of the defendant, with at least two sureties, residents and freeholders, or householders, in the county, which shall be filed to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released shall equal or exceed the amount claimed by the plaintiff in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff, and in the money or currency of the contract; or to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or amount of money, debts, or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the amount of such property, money, debts, or credits, and in the money or currency of the contract. The value of the property sought to be released, if disputed, shall be determined, in the money or currency of the contract, by the court or Judge thereof, upon proof or by a sworn appraiser or sworn appraisers, not exceeding three, to be appointed by the court or Judge for that purpose. Before filing the undertaking, the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, he shall give notice thereof to the defendant within two days; or at the time of giving notice of motion for an order to discharge the attachment, the defendant may in his notice name the sureties, and if the plaintiff require them to justify he shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the court in which the suit is pending, or the Judge thereof, after reasonable notice.

1. BOND MAY BE ENFORCED STRICTLY. There is nothing in the policy of the law to forbid a bond given to release property from attachment, being enforced according to the very letter of its condition. *Bowers v. Beck*, 2 Nev. 139.

FULL DISCUSSION. *Id.*

2. BOND—Liability of Surety—Stipulations, etc. *Seawell v. Cohn*, 2 Nev. 308.

Motion for Discharge.

J. C.

3236. SEC. 141. The defendant may also, any time before the time of answering expires, apply upon motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the Judge thereof, for the discharge of the attachment, on the ground that the writ was improperly issued.

Motion, How Opposed.

J. C.

3237. SEC. 142. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Writ Discharged, When.

J. O.

3238. SEC. 143. If upon such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Return of Writ by Sheriff.

J. O.

3239. SEC. 144. The Sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceeding indorsed thereon or attached thereto.

CHAPTER 5—DEPOSIT IN COURT.

Court May Order Delivery of Property.

3240. SEC. 145. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Appointment of Receiver, When May Be Made.

3241. SEC. 146. A receiver may be appointed by the court in which the action is pending, or by a Judge thereof: First—Before judgment, provisionally, on the application of either party, when he establishes a *prima facie* right to the property, or an interest in the property which is the subject of the action, and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired. Second—After judgment to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal; and, Third—In such other cases as are in accordance with the practice of courts of equity jurisdiction.

TITLE VI.

Of the Trial and Judgment in Civil Actions.

CHAPTER 1—JUDGMENT IN GENERAL.

Judgment, When May Be Entered.

3242. SEC. 147. A judgment is the final determination of the rights of the parties in the action or proceeding, and may be entered in term or vacation.

1. **JURISDICTION OF COURTS TO RENDER JUDGMENT.** The jurisdiction of a court to render judgment in a cause is coextensive with its authority to inquire into the facts. *Feusier v. Lammon*, 6 Nev. 209.

2. **FORM OF JUDGMENT.** The sufficiency of the writing, claimed to be a judgment, should always be tested by its substance rather than its form. *Humboldt M. & M. Co. v. Terry*, 11 Nev. 237; *Terry v. Berry*, 13 Nev. 514.

3. **JUDGMENT FINAL AND COMPLETE.** The decision of the court is the judgment; the entry by the Clerk is the evidence of it merely. *Cal. State Tel. Co. v. Patterson*, 1 Nev. 150.

A judgment may be final, although it is not recorded in a judgment book or entered in a judgment docket. *Id.*

4. **JUDGMENT—WHEN FINAL.** A judgment is final that disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court. *Perkins v. S. N. S. M. Co.*, 10 Nev. 405.

MUST BE DETERMINED BY THE RECORD. The question whether a judgment is final must be determined with reference to the facts presented by the record. *Id.*

WHEN NOT AFFECTED BY FUTURE ORDERS. A judgment is none the less final because some future orders of the court may become necessary to carry it into effect. *Id.*

5. **FINAL JUDGMENT.** There cannot be two final judgments in the same action. *Low v. C. P. M. Co.*, 2 Nev. 75.

6. **JUDGMENT RENDERED OUT OF TERM VOID.** A judgment rendered at a time and place other than those appointed by law, is no judgment; it is not merely erroneous; it is void. *Dalton v. Libby*, 9 Nev. 192.

How Set Aside. *Id.*

7. JUDGMENT ENTERED IN VACATION ON DEMURRER IS IRREGULAR AND VOID. *Champion v. Sessions*, 1 Nev. 478.

8. JUDGMENT VOID FOR WANT OF JURISDICTION. A judgment by a Justice of the Peace against a non-resident, where the affidavit or order of publication is insufficient and there is no personal service nor any appearance, is absolutely void. *Little v. Currie*, 5 Nev. 90.

9. JUDGMENT IN EQUITY CASE—SPECIAL ISSUES. A judgment based on a general verdict in such an action is erroneous. *Hulley v. Chedic*, 22 Nev. 127.

10. POWER OF COURT OVER ITS JUDGMENT. When a judgment has once been rendered, the court has no right to set it aside, except in case of error in some respect, or injustice in the result. *Scott v. Haines*, 4 Nev. 426.

WRONG REASON DOES NOT VITIATE CORRECT JUDGMENT. A wrong reason for a judgment which is in itself correct, will not vitiate or affect it. *Id.*

11. CLERICAL ERROR MAY BE AMENDED when the error is shown by the record, and there is no necessity to resort to other evidence than is afforded by the record to correct the error. *Sparrow & Trench v. Strong*, 2 Nev. 362.

There is great conflict of authority as to whether an inferior court can amend its record whilst the case is pending, on writ of error, in a superior court: *Held*, that the pendency on the writ of error is not an impediment to the amending of the record so as to correct clerical errors. *Id.*

12. JUDGMENT, WHEN UNDER CONTROL OF COURT. During the term in which the judgment is rendered the court has complete control of it, and on proper showing may set it aside. *Ballard v. Eucell*, 1 Nev. 342.

13. JURISDICTION OVER JUDGMENT AFTER EXPIRATION OF TERM. To continue full and complete jurisdiction in the court over the case beyond the term, some order must be made or proceeding taken in accordance with statute. *State v. First National Bank*, 4 Nev. 358; *State v. Fourth District Court*, 16 Nev. 371; *Daniels v. Daniels*, 12 Nev. 118.

14. AMENDMENT OF JUDGMENT AFTER ADJOURNMENT OF TERM. The court has no power to amend a judgment after the adjournment of the term unless there is something in the record to amend by. *Solomon v. Fuller*, 14 Nev. 63.

15. JUDGMENT NOT A BAR WHEN NOT ON MERITS, nor can it be used as evidence in another action to establish the facts constituting the merits of the action in which it was rendered. *Van Vliet v. Olin*, 1 Nev. 495.

PROCEEDINGS NOT CONCLUSIVE without a judgment on the merits. *Id.*

16. JUDGMENT CONCLUSIVE. A judgment of a court of competent jurisdiction, between the same parties, and upon the same issues, is as a plea, a bar, or as evidence, conclusive not only of the rights which it establishes, but of the facts which it directly decides. *McLeod v. Lee*, 17 Nev. 103; *Brown v. Ashley*, 16 Nev. 311; *Sherman v. Dilley*, 3 Nev. 21.

17. JUDGMENT—FINALITY OF. Where a party has treated a judgment as final by appealing from it to the supreme court, which appeal has been entertained and decided upon its merits, he cannot afterwards claim that no final judgment has been entered in the case. *State v. Com. Lander Co.*, 22 Nev. 71.

COUNTY—JUDGMENT AGAINST, SAME AS AUDITED CLAIM AGAINST. The rendition of a judgment against a county is an auditing of the claim within the meaning of the statute, and it becomes the duty of the Commissioners to allow it as an audited claim, unless some sufficient defense exists to the judgment. It makes no difference in this rule whether in the action in which the judgment was obtained the county was plaintiff or defendant. *Id.*

18. GUARDIANSHIP MATTERS—JUDGMENT OF COURTS IN—HOW ONLY TO BE RESISTED. The judgment of the district court on matters concerning persons or estates of minors cannot be successfully resisted until overruled or modified by some proceeding impeaching it. *Deegan v. Deegan*, 22 Nev. 185.

19. RIGHTS CLAIMED UNDER JUDGMENT. When any rights are claimed by virtue of a judgment of a court of special and limited jurisdiction, all the facts necessary to confer jurisdiction must be affirmatively shown. *Mallett v. Uncle Sam Mining Co.*, 1 Nev. 188.

20. JUDGMENT MUST CORRESPOND WITH PLEADINGS. A judgment must accord with and be warranted by the pleadings of the party in whose favor it is rendered. *Frevort v. Henry*, 14 Nev. 191.

21. JUDGMENT MUST CONFORM TO THE ISSUE. A judgment must conform with, and be sustained by, the pleadings of the party in whose favor it is rendered. No court, jury or referee has any authority to find a fact or draw therefrom a legal conclusion which is outside the issue. *Marshal v. G. F. G. & S. M. Co.*, 16 Nev. 156.

22. **PRESUMPTION IN FAVOR OF JUDGMENT.** An appellate court will presume that the judgment of the lower court was sustained by the evidence in the absence of a showing to the contrary. *Carpenter v. Johnson*, 1 Nev. 332; *Nesbitt v. Chisholm*, 16 Nev. 39.
23. **JUDGMENT—PRESUMPTION OF FINDINGS.** In an action to reform a deed for mutual mistake, the existence of which is denied by defendant, it was the duty of the lower court to determine which contention was correct; and, by giving judgment in favor of plaintiff, the presumption is that the issue was implicitly found in his favor. *Wilson v. Wilson*, 23 Nev. 267.
24. **MISTAKE IN JUDGMENT** should be corrected by motion in lower court. *Howard v. Richards*, 2 Nev. 128.
25. **ERROR IN CALCULATION—Modification of Judgment.** *Feusier v. Va. City*, 3 Nev. 58.
26. **AMENDMENT OF JUDGMENT OF SUPREME COURT.** A judgment rendered at a previous term of the supreme court can only be amended upon something appearing in the original record. *Peacock v. Leonard*, 8 Nev. 247.
27. **ACTION ON JUDGMENT, ETC.** *Rogers v. Hatch*, 8 Nev. 35.
- SHERMAN V. DILLEY, 3 NEV. 21, CRITICIZED. The opinion expressed in *Sherman v. Dilley*, 3 Nev. 21, that a judgment cannot be pleaded in bar or operate by way of estoppel while the case is pending on appeal, is rather dictum than decision. *Id.***

Judgment, How Given.

3243. SEC. 148. Judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Judgment, Joint or Several.

3244. SEC. 149. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

JUDGMENT, ENTRY OF. Where a defendant is severally liable a separate judgment against him may be entered upon his default, leaving the action to proceed against his codefendants. *Evans v. Cook*, 11 Nev. 69.

Extent of Relief Not to Exceed Complaint.

3245. SEC. 150. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Dismissal of Action or Nonsuit, in What Cases Granted.

3246. SEC. 151. An action may be dismissed, or a judgment of nonsuit entered in the following cases: First—By the plaintiff himself at any time before trial, upon the payment of costs, if a counterclaim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the Clerk to the defendant, who may have his action thereon. Second—By either party upon the written consent of the other. Third—By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth—By the court when upon trial and before the final submission of the case the plaintiff abandons it. Fifth—By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions shall be made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly. In every other case the judgment shall be rendered on the merits.

1. **SPECIFICATION OF GROUNDS OF NONSUIT.** The grounds urged for a nonsuit are required to be as specifically designated as any other exceptions or objections taken in the course of a trial. *Sharon v. Minnock*, 6 Nev. 377.
2. **NONSUIT—WHEN GRANTED.** A nonsuit can only be granted upon the grounds stated in the statute and in the manner therein provided. *Burns v. Rodefer*, 15 Nev. 59.

3. **DISMISSAL OF ACTION BY PLAINTIFF NOT TO AFFECT INTERVENORS.** When O'Connell & Splain commenced a suit to foreclose a mechanics' lien against Ivers & Cook; and Elliott, and Patty & Doane intervened as lien claimants, and after appearance put in by defendants to the interventions, O'Connell & Splain filed a dismissal of the suit: *Held*, that the dismissal could not affect the rights of the intervenors, and that they had a right to adjudication as between themselves and defendants. *Elliott v. Ives*, 6 Nev. 287.

CHAPTER 2—JUDGMENT UPON FAILURE TO ANSWER.

Judgment on Failure to Answer, How to Be Entered.

3247. SEC. 152. Judgment may be had, if the defendant fail to answer the complaint, as follows: First—In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two. Second—In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. Third—In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no order has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the state, shall require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

1. "DEFAULT" NOT NECESSARY TO SUPPORT JUDGMENT AFTER DEMURRER OVERRULED. Where a demurrer to a complaint has been overruled an entry of default is not a prerequisite to the rendition of judgment. *Winter v. Winter*, 8 Nev. 129.
2. JUDGMENT BY DEFAULT Confined to Prayer of Complaint. *Burling v. Goodman*, 1 Nev. 314.
3. JUDGMENT OF DISMISSAL, where no summons has been served, should be without prejudice. *Cedar Hill M. Co. v. J. Little M. Co.*, 15 Nev. 302.
4. WHERE DEFENDANT FAILS TO APPEAR in action for recovery of unliquidated damages, it is not necessary to call a jury to assess damages. Court may either hear proof itself or order a reference for that purpose. One of these modes must, however, be pursued. It is erroneous to render judgment by default without proof in such cases. *Ballard v. Purcell*, 1 Nev. 342.
5. DEFAULT IMPROPERLY TAKEN. The defendant ought, if an opportunity is presented during the term at which it was taken, to apply to the court below for relief. *Kidd v. Four-Twenty M. Co.*, 3 Nev. 381.
6. JUDGMENT BY DEFAULT—AUTHORITY OF CLERK TO ENTER. Withdrawal of demurrer without obtaining leave to answer leaves case in position to have default entered at any time. *Ewing v. Jennings*, 15 Nev. 379.
7. JUDGMENT BY DEFAULT—Inexcusable Negligence. *Harper v. Mallory*, 4 Nev. 448.
8. JUDGMENT BY DEFAULT—Excusable Negligence. *State v. Con. V. M. Co.*, 13 Nev. 194.

CHAPTER 3—OF ISSUES AND THE MANNER OF THEIR DISPOSITION.

When an Issue Arises.

3248. SEC. 153. An issue arises when a fact or conclusion of law is maintained by the one party, and controverted by the other. Issues are of two kind: First, of law; and, second, of fact.

Issue of Law.

3249. SEC. 154. An issue of law arises upon a demurrer to the complaint, or an answer as to some part thereof.

Issue of Fact.

3250. SEC. 155. An issue of fact arises: First, upon a material allegation in the complaint, controverted by the answer; and, second, upon new matter in the answer, except an issue of law is joined therein.

Issue of Law, How Tried.

3251. SEC. 156. An issue of law shall be tried by the court unless it be referred, upon consent, as provided in chapter six of this title.

Issue of Fact, How Tried.

3252. SEC. 157. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as provided in this Act. Where there are issues, both of law and fact, to the same complaint, the issue of law shall be first disposed of.

DISMISSAL WITHOUT JURY TRIAL. A party cannot complain on appeal, that without a waiver on his part a jury trial was not allowed him, when the record does not show that he demanded a jury. *Haley v. Eureka Co. Bank*, 21 Nev. 127.

Order of Entry of Cases.

3253. SEC. 158. The Clerk shall enter cases upon the calendar of the court according to the date of the issue, unless otherwise provided by rule of court.

Issue, How Brought to Trial.

3254. SEC. 159. Either party may bring the issue to trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict, or judgment, as the case may require.

Postponement of Trial—Affidavit Necessary—Court May Impose Conditions.

3255. SEC. 160. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The party obtaining the postponement of a trial shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance be then taken by deposition before a Judge or Clerk of the Court in which the case is pending, or before such Notary Public as the court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the court may, in its discretion, annex as a condition thereto an order that the party obtaining such post-

ponement shall not, pending the trial of the action, remove from the premises in controversy any valuable quartz rock, earth or ores, and for any violation of an order so made, the court or the Judge thereof may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement.

1. CONTINUANCE—DISCRETION OF COURT. A motion for a continuance is always addressed to the sound discretion of the court, and should not be interfered with except where there has been a manifest abuse of that discretion. *Choate v. Bullion M. Co.*, 1 Nev. 73.
2. CONTINUANCE—JOINT DEBTOR DEFENDANT DECLARED A BANKRUPT. *Held*, on motion for continuance as to other partner, trial could not proceed against him until a disposition of bankrupt proceedings of his copartner. *Tinkum v. O'Neale*, 5 Nev. 93.
3. CONTINUANCE—Power of Court to Impose Conditions Other Than the Payment of Costs. *Brown v. Warren*, 17 Nev. 417.
4. CONTINUANCE—WHEN PROPERLY REFUSED. When an application is made for a continuance on the ground of the absence of a witness, it is certainly in the discretion, if it is not the absolute duty, of the court, under our statute, to deny the application when the party opposing the motion will admit that the witness, if present, would swear to the facts as set out by the party applying for the continuance. *O'Neil v. N. Y. & S. P. M. Co.*, 3 Nev. 141.
5. CONTINUANCE—WHEN NOT PROPERLY REFUSED. When a party makes out a good prima facie case for a continuance on account of the absence of a material witness, the court is not justified in refusing the continuance because it may imagine the possible existence of facts which, if shown, would have been sufficient in avoidance of the case made by the party moving. *Beatty v. Sylvester*, 3 Nev. 228.
6. CONTINUANCE—ERROR CURED. Where witness afterwards appears and testifies, the error, if any was committed, is cured. *Allen v. Reilly*, 15 Nev. 452.
7. PRACTICE ACT, SECTION 160—DEVELOPMENT OF MINES—EVIDENCE. There is nothing in Section 160 of the Practice Act (which authorizes a delay of proceedings in mining cases for the purpose of allowing developments to be made) to show that it was intended to make actual developments the only or even the best evidence admissible. *Silver M. Co. v. Fall*, 6 Nev. 117.

CHAPTER 4—TRIAL BY JURY.

ARTICLE I.

Formation of the Jury.

For Acts concerning juries, see Secs. 3867-3880.

Drawing of Jury—Struck Jury, When May Be Demanded—How Obtained—Venire, How Served.

3256. SEC. 161. When the action is called for trial by jury, the Clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if for any cause a juror or jurors be excused or discharged, a sufficient number of additional jurors shall be drawn from the jury box and summoned as provided by law. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than four. Such consent shall be entered by the Clerk in the minutes of the trial. If either party to the action shall, prior to its being set for trial, file and serve upon the opposite party an affidavit showing that property or money of more than the value of ten thousand dollars is involved in the controversy, together with a notice that he will demand a struck jury for the trial of the same, the court shall at the time of setting the cause for trial, if it be satisfied that said amount or more is really involved, and if the party demanding such struck jury shall deposit a sufficient amount to pay the expenses of obtaining the same, make an order that the cause be tried by a special struck jury, which shall be obtained in the following manner: The Judge shall proceed forthwith to draw from the jury box a list of one hundred names of jurors therein contained, which list shall be opened to the inspection of either party at all proper times after being drawn. At a time to be

appointed by the court, not less than twenty-four hours after the completion of such list, the parties shall be required, in open court, to strike from such list one name alternately, the plaintiff striking first, till there shall be but fifty names remaining. Such fifty remaining jurors shall thereupon be summoned, as provided by law, to appear in court on the day fixed for the trial. They shall not be bound to attend unless when summoned they are paid or tendered their fees for one day's attendance and mileage from their place of residence, if they demand it. When the venire is issued for said jurors, either party shall have the right, upon payment of his fees, to demand of the Clerk a duplicate of the venire, and he, or any citizen of the state in his behalf, may serve the same, which service shall have the same effect as if made by the Sheriff of the county. If on the day they are directed to attend, less than thirty jurors are in attendance, or if any of the jurors in attendance are for good cause or by consent of the parties excused by the court, so as to reduce the number below thirty, the court shall thereupon, if either party demand it, draw from the jury box an additional list of names, not less than double the number so deficient, who shall be summoned as herein provided to attend forthwith or on any day to which the trial may be adjourned; and this process shall be continued till there are at least thirty jurors for the parties to choose from; *provided*, that if any juror disobey the summons to attend, the court shall, if either party demand it, compel his attendance by attachment before summoning additional jurors, unless the court be satisfied that such attendance cannot be enforced within a reasonable time. When the attendance of not less than thirty jurors is secured, unless the parties consent to choose from a smaller number, said jurors may be sworn and examined by the parties on their voir dire, and after such examination, the plaintiff first, and then the defendant, shall strike from the list one juror alternately till the number is reduced to twelve, or such less number as the parties may consent to, who shall be sworn to try the case; *provided*, that if there be an uneven number of jurors to be stricken off, the court shall strike off the last one; and if at any stage of the proceedings a party unreasonably delays to strike off a juror in his turn, the court shall strike for such party so delaying to strike. *As amended, Stats. 1875, 64.*

RIGHT TO JURY IN EQUITY CASE. In a purely equity case; the calling of a jury is a matter of discretion with the Judge and not a matter of right in the parties. *Van Vliet v. Olin*, 4 Nev. 95.

Oath Administered to Jury.

3257. SEC. 162. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between-----, the plaintiff, and-----, the defendant, and a true verdict render according to the evidence. After the oath or affirmation has been administered and the jury has been fully impaneled, it shall be the duty of the court to order the jury into the custody of the Sheriff, or other officer selected by the court, and the jurors shall not be allowed to separate or depart from the custody of the Sheriff or other officer until they have been duly discharged, unless by the consent of the parties to the action. It shall be the duty of the Sheriff, at the charge of the parties to the action, to prepare suitable and comfortable apartments, and prepare food for the jury pending the trial.

Challenge to Jurors—Four Peremptory Challenges.

3258. SEC. 163. Either party may challenge the jurors; but when there are several parties on either side, they shall join in a challenge before it can be made, unless the court otherwise order or direct. The challenges shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges.

Challenge for Cause—For What Taken.

J. C.

3259. SEC. 164. Challenges for cause may be taken on one or more of the following grounds: First—A want of any of the qualifications prescribed by

statute to render a person competent as a juror. Second—Consanguinity or affinity within the third degree to either party. Third—Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being security on any bond or obligation for either party. Fourth—Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action; or being then a witness therein. Fifth—Interest on the part of the juror in the event of the action, or in the main question involved in the action; except the interest of the juror as a member or citizen of a municipal corporation. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action, or the main question involved therein; *provided*, that the reading of newspaper accounts of the subject matter before the court shall not disqualify a juror either for bias or opinion. Seventh—The existence of a state of mind in the juror evincing enmity against or bias to either party.

Section 164 made applicable to justices' courts by Section 548 of this Act.

1. **GROUND OF CHALLENGE FOR CAUSE TO BE SPECIFIED.** The grounds of challenge to jurors for cause are pointed out by statute, and a party desiring to have such challenge tried must specify the ground or grounds upon which he bases it. *Estes v. Richardson*, 6 Nev. 128.

JUROR—CHALLENGE FOR CAUSE. Where a juror on examination as to his qualifications said that he had heard something of the matter, and had an impression which it would require testimony to remove, that he had no bias and his impression was very vague, and that he had never talked with any one who pretended to know the facts: *Held*, that a challenge for cause was properly overruled. *Id.*

2. **CHALLENGE FOR CAUSE—Injury to Party by Refusal Discussed.** *Fleeson v. Savage S. M. Co.*, 3 Nev. 157.

3. **CHALLENGE OF JUROR—DUTY OF PARTY CHALLENGING.** Where information before the court is insufficient to determine cause of challenge, party challenging should at least offer to prove the grounds. *Weill v. Lucerne M. Co.*, 11 Nev. 200.

Challenge for Cause, How Tried.

3260. SEC. 165. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

ARTICLE II.

Conduct of the Trial.

Juror Becoming Sick, Effect Of.

3261. SEC. 166. If, after the impaneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

Charge to Jury.

3262. SEC. 167. In charging the jury the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or shall sign, at the time, a statement of such points prepared and submitted by the counsel of either party. *As amended, Stats. 1889, 18.*

1. **PROVINCE OF INSTRUCTIONS.** To inform the jury what the law is connected with the case in hand and show them how to apply it to the particular facts involved. *State v. Lavigne*, 17 Nev. 435.
2. **CHARGE, WHEN PROPERLY REFUSED.** It is proper for a court to refuse instructions containing correct principles of law, if there is no evidence before the jury making them applicable to the case on trial. *Sherman v. Dilley*, 3 Nev. 22.

3. **INSTRUCTIONS AT PARTY'S OWN REQUEST—Estoppel.** *Gillson v. Price*, 18 Nev. 109; *Meyer v. V. & T. R. Co.*, 16 Nev. 341.
 4. When a court is laying down a general rule of law, it is not improper to notice exceptions to the general rule or such circumstances as will prevent its operation. *Van Valkenburg v. Huff*, 1 Nev. 142.
 5. **FACTS PROVED AND NOT CONTROVERTED NEED NOT GO TO THE JURY.** It is no error for a court in its charge to take from the consideration of the jury a fact proven by one party and not controverted by the other. *Sharon v. Minnock*, 6 Nev. 377.
 6. **INSTRUCTION INAPPLICABLE TO ISSUE.** A judgment will not be reversed on account of an erroneous instruction, when it appears that it was not applicable to the issues and could not have injured. *Brown v. Lillie*, 6 Nev. 244.
 7. **WHOLE CHARGE TO JURY TO BE CONSIDERED AS ENTIRETY.** *Caples v. C. P. R. Co.*, 6 Nev. 265; *Allison v. Hagan*, 12 Nev. 38; *Solen v. V. & T. R. Co.*, 13 Nev. 106.
 8. **CHARGE TO JURY—Error—In Case of Money Account, Bill of Particulars.** *Huguet v. Owen*, 1 Nev. 464.
 9. **CHARGE TO JURY—Error—Proper Measure of Damages.** *Harvey v. Sides S. M. Co.*, 1 Nev. 539.
 10. **CHARGE OF THE JUDGE UPON THE FACTS.** An instruction of the court, assuming as a fact that A was a creditor of B, where this was a fact in issue in the case, was clearly erroneous. *Gaudette v. Travis*, 11 Nev. 149; *Tognini v. Kyle*, 17 Nev. 209.
 11. **ERROR IN CHARGE.** Action for water right and mill site, error to charge that plaintiff must prove right to premises and damages. *Dillon v. Sherman*, 2 Nev. 67.
 12. **INSTRUCTIONS.** The rule that a judgment must be reversed where instructions on a material point are contradictory, is not an absolute and unqualified rule. Rule explained. *Lobdell v. Hall*, 3 Nev. 507.
- INSTRUCTIONS GIVEN OR REFUSED** by the lower court will not be inquired into on appeal, unless the record shows that the giving or refusal to give them was excepted to at the time. *Id.*
13. **INSTRUCTIONS—Evident Meaning Versus Literal Language—Theory Regarding Ledge—Instruction that it Must Be Conclusively Established, Error.** *Silver M. Co. v. Fall*, 6 Nev. 116.
 14. **CHARGE REFUSED—ERROR.** When a plaintiff claims water on the ground of prior appropriation, it is error in the court to refuse an instruction to this effect: "The plaintiff is not entitled to any greater quantity of the water of Desert creek than he actually appropriated prior to defendant's appropriation." *Lobdell v. Simpson*, 2 Nev. 274.
 15. **"CHARACTER" OF INJURED PERSON NOT INVOLVED IN SUIT FOR NEGLIGENCE.** An instruction submitting it to the jury for such purpose is error. *Johnson v. Wells, Fargo & Co.*, 6 Nev. 224.
- PRESUMPTION THAT JURIES FOLLOW INSTRUCTIONS.** The presumption in all cases of jury trials is that the jury apply the law as given by the court, and upon such law and the evidence render their verdict; and no appellate court can decide the effect of the one separate from the other. *Id.*
16. **ACTION FOR COUNSEL FEES, TRAVELING EXPENSES, ETC.—Charge to Jury.** *Hardy v. Ophir Co.*, 4 Nev. 304.
 17. **MODIFICATION OF PROPER INSTRUCTIONS—Error—Action on Insurance Policy.** *Gerhauser v. North British Co.*, 6 Nev. 15.
 18. **INSTRUCTION REMOVING QUESTION OF FACT FROM JURY PROPERLY REFUSED.** Reiterations in instructions may be stricken out. *Gerhauser v. N. B. Ins. Co.*, 7 Nev. 176.
 19. **SUBMITTING REJECTED PORTIONS ONLY PARTLY OBLITERATED.** No error, unless objected to and rewriting refused. *Allison v. Hagan*, 12 Nev. 38.
 20. **EQUITY CASE BEFORE JURY.** If an equity case is treated as an ordinary action at law, and submitted to a jury as such, and the court considers itself bound and controlled by the verdict as in an action at law, each party has the same right with respect to instructions as if it were a case at law. *Van Vliet v. Olin*, 4 Nev. 95.
- REFUSAL OF INSTRUCTIONS.** *Held*, error in such case. *Id.*
21. **WHEN PROPERLY DENIED.** Instructions as to the law under a certain state of facts are properly denied when the uncontroverted evidence shows such facts do not exist. *Shields v. Ditch Co.*, 23 Nev. 349.
 22. **INSTRUCTIONS—WHERE NO INJURY OCCURS.** Court will not consider whether correct or not. *Smith v. Lee*, 10 Nev. 208.
 23. **WHEN NOT PREJUDICIAL.** When upon the appellant's own showing of facts, the judgment if rendered in his favor, would have to be reversed. *Bishop v. Stewart*, 13 Nev. 25; *Gaudette v. Travis*, 11 Nev. 149.

24. STATING TO A JURY A FACT NOT CONTROVERTED—Not Error. *Menzies v. Kennedy*, 9 Nev. 152.
25. INSTRUCTIONS CALCULATED TO MISLEAD JURY should be refused. *Thompson v. Powning*, 15 Nev. 195.
26. INSTRUCTION NOT RELEVANT, NOT TO BE GIVEN. The court is not required to instruct the jury upon any question not raised by the pleadings, nor authorized by the evidence, nor at issue in the case. *Schaber v. Gilmer*, 13 Nev. 330; *Longabaugh v. V. & T. R. Co.*, 9 Nev. 271; *Fulton v. Day*, 8 Nev. 80; *Schissler v. Chesshire*, 7 Nev. 427; *Tognini v. Hansen*, 18 Nev. 61; *Meyer v. V. & T. R. Co.*, 16 Nev. 341.
27. UNINTELLIGIBLE INSTRUCTION PROPERLY REFUSED. *Colquhoun v. W. F. & Co.*, 21 Nev. 459.
28. DIFFERENCE BETWEEN CIVIL AND CRIMINAL PRACTICE AS TO REFUSING INSTRUCTIONS. *Gerhauser v. N. B. Ins. Co.*, 7 Nev. 174.

May Decide in Court or Retire—Duty of Officer—May Appoint Persons to Remain With Officer.

3263. SEC. 168. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place under charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury separate from other persons. He shall not suffer any communication to be made to them, or make any himself, unless by order of the court or Judge, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. Each party to the action may appoint one or more persons, one of whom on each side shall be entitled to remain with the officer or officers in charge of the jury, and to be present at all times when any communication is had with the jury, or any individual member thereof, and no communication, either oral or written, shall be made to or received from the jurors, or any of them, except in the presence of and hearing of such persons so selected by the parties; and in case of a written communication, it shall not be delivered till read by them. *As amended, Stats, 1875, 66.*

1. SEPARATION OF A JUROR—When Not Prejudicial. *Carnaghan v. Ward*, 8 Nev. 30.
- DIFFERENCE BETWEEN "TREATING" A JUROR AND PERFORMING A MERE ACT OF HUMANITY.
There is a marked distinction between the performance of a mere act of humanity or duty for a juror, such as sending at his request for liniment to relieve his pain, and the voluntary offer of civilities, such as the treating with spirituous liquors, passed on in *Sacramento and Meredith M. Co. v. Showers*, 6 Nev. 291, which neither duty, charity, nor the conventionalities of society require. *Id.*
2. "TREATING" JURY—Verdict and Judgment Set Aside. *Sacto. M. Co. v. Showers*, 6 Nev. 291.
- TAMPERING WITH JURY—Rule. *Id.*
- See *Schissler v. Chesshire*, 7 Nev. 427.
3. DRINKING SPIRITUOUS LIQUOR BY JUROR. When not furnished by prevailing party will not vitiate verdict. *Richardson v. Jones*, 1 Nev. 405.
4. WHEN LIQUOR USED TO INTOXICATING EXTENT. Verdict will be set aside. *Davis v. Cook*, 9 Nev. 134.
5. SEPARATION OF JURY WITHOUT OBJECTION. In absence of showing of harm verdict not disturbed. *Menzies v. Kennedy*, 9 Nev. 152.

What Papers Jury May Take.

3264. SEC. 169. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Return for Instructions.

3265. SEC. 170. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the informa-

tion required shall be given in the presence of or after notice to the parties or counsel.

When Discharged Without Verdict.

3266. SEC. 171. In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court shall direct.

Adjournment of Court.

3267. SEC. 172. While the jury are absent, the court may adjourn from time to time in respect to other business, but it shall, nevertheless, be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Verdict to Be Declared.

3268. SEC. 173. When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge; their names shall then be called, and they shall be asked by the court, or the Clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

Informality in Verdict May Be Corrected.

3269. SEC. 174. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may again be sent out.

Clerk to Record Verdict—Jury to Assent To.

3270. SEC. 175. When the verdict is given, and is not informal or insufficient, the Clerk shall immediately record it in full in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If more than one-fourth of the jurors disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

ARTICLE III.

The Verdict.

Verdict, General or Special.

3271. SEC. 176. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

1. SPECIAL VERDICT must expressly present all the material facts, so that nothing shall remain for the court but to draw from them the conclusions of law. *Knickerbocker v. Hall*, 3 Nev. 149.
2. NO LEGAL JUDGMENT ON VERDICT IRRESPONSIVE TO PLEADINGS. If a verdict is absolutely defective under the pleadings, no legal judgment can be entered thereon. *Brown v. Lillie*, 6 Nev. 177.

Court May Direct Jury to Find Special Verdict.

3272. SEC. 177. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and, in all cases, may instruct them, if they

render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict of finding shall be filed with the Clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Jury to Find Amount of Recovery.

3273. SEC. 178. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counterclaim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

FORM OF VERDICT. Irregular, but capable of being understood, except as to interest: *Held*, court had right to allow interest on amount found at rate expressed in note. *Allen v. Reilly*, 15 Nev. 452.

Verdict in Action to Recover Specific Property.

3274. SEC. 179. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may, at the same time, assess the damages, in gold coin, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

JURY SHOULD FIND AMOUNT. Value of property at time of conversion not always true measure of damage. *Knickerbocker v. Hall*, 3 Nev. 194.

Clerk to Make Entry in Minutes.

3275. SEC. 180. Upon receiving a verdict, an entry shall be made by the Clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER 5—TRIAL BY COURT.

Jury Trial May Be Waived, How.

3276. SEC. 181. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, and, with the assent of the court, in other actions, in the manner following: First—By failing to appear at the trial. Second—By written consent, in person or by attorney, filed with the Clerk. Third—By oral consent in open court, entered in the minutes.

Time for Rendering Decision of Court.

3277. SEC. 182. Upon the trial of every issue of fact by the court, when sitting without a jury, its decision shall be rendered in writing by the court or Judge who tried the cause, and filed with the Clerk within ten days after the trial took place. In rendering such decision, the court or Judge shall briefly state, in his opinion, the facts found and the conclusions of law reached, and within one week thereafter the attorney for the prevailing party shall draw complete findings of facts and conclusions of law, and present them to the Judge: *provided*, that such Judge shall, at the time be within said county, and in case of the absence from the county of the Judge, then the complete findings shall be presented for signature within thirty days after such trial. Judgment shall be entered in accordance with said complete findings and conclusions. *As amended. Stats. 1893, 116.*

1. PRACTICE ACT, SECTIONS 182 AND 340—"WRITTEN DECISION" AND "WRITTEN OPINION." The "written decision" referred to in Section 182 of the Practice Act, is something which must precede the judgment, and upon which it is entered, and is different from the "written opinion" referred to in Section 340. *Corbett v. Job*, 5 Nev. 201.

2. **TRIAL BY COURT—FINDINGS EQUIVALENT TO VERDICT.** Where a cause is tried by a court without a jury, the same weight and consideration is given to its findings as to a verdict; and the same rules apply as to reversing them on appeal on the ground of being contrary to evidence, as to a verdict of the jury. *State v. Yellow Jacket M. Co.*, 5 Nev. 415.
3. **EXCEPTION MUST BE TAKEN.** When a finding of facts is defective, it must be excepted to in the court below, or this court will not reverse the case for such defect. *Whitmore v. Shiverick*, 3 Nev. 288.
4. **FINDINGS, WHAT NEED NOT CONTAIN.** It is not necessary for a court to find a fact which is admitted in the pleadings. *Virgin v. Brubaker*, 4 Nev. 31.
5. **FINDING UNSUPPORTED BY EVIDENCE—Judgment Not Sustained.** *Lockhart v. Mackie*, 2 Nev. 294.

Referee—Chancery Cases.

3278. SEC. 183. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered. Chancery cases may be tried by the court, with or without the finding of a jury, upon issues formed by the court.

For appeal, see Secs. 3857-3858.

CHANCERY AND LAW. When there are two distinct defenses, it is not the proper practice to impanel one jury to try the equitable defense, and another the legal defense. It is, however, proper to keep the two defenses separate. The Judge himself may first hear and determine the equitable side of the case; or, if in doubt, he may submit special issues to the jury who are to try the law side of the case. *Low v. Crown Point*, 2 Nev. 75.

CHAPTER 6—OF REFERENCES AND TRIAL BY REFEREE.

Order of Reference.

3279. SEC. 184. A reference may be ordered upon the agreement of the parties, filed with the Clerk, or entered in the minutes: First—To try any or all of the issues in an action or proceeding whether of fact or of law, and to report a judgment thereon. Second—To ascertain a fact necessary to enable the court to proceed and determine the case.

TRIAL BY REFEREE—Irregular Practice—Discussion. *Fitzpatrick v. Fitzpatrick*, 6 Nev. 65.

Court May Order Reference in Certain Cases.

3280. SEC. 185. When the parties do not consent, the court may upon the application of either, or of its own motion, direct a referee in the following cases: First—When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second—When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. Third—When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or, Fourth—When it is necessary for the information of the court in a special proceeding.

Referee, Who May Be.

3281. SEC. 186. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or Judge shall appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

Grounds for Objection to Person as Referee.

3282. SEC. 187. Either party may object to the appointment of any person as referee on one or more of the following grounds: First—A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second—Consanguinity or affinity within the third degree to either party. Third—Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being

security on any bond or obligation for either party. Fourth—Having served as a juror or been a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause. Fifth—Interest on the part of such person in the event of the action, or in the main question involved in the action. Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh—The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, How Disposed Of.

3283. SEC. 188. The objections taken to the appointment of any person or referee shall be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

Report of Referees to Stand as Decision of Court.

3284. SEC. 189. The referees shall make their report within ten days after the testimony before them is closed. Their report upon the whole issue shall stand as the decision of the court, and upon filing the report with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the court. The decision of the referees may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

VALIDITY OF JUDGMENT—*Dictum*. Maher v. Swift, 14 Nev. 332.

1. COURT MAY REVOKE ORDER OF CONTINUANCE AND APPOINT A REFEREE. Young v. Clute, 12 Nev. 31.

POWER OF REFEREE same as court would have to continue the hearing from time to time. *Id.*

2. REMOVAL OF REFEREE. If referee fails to make report in time ordered, he may be removed upon application of either party, but if not removed, his authority to hear the case does not expire. Rhodes v. Williams, 12 Nev. 20.

CHAPTER 7—GENERAL PROVISIONS RELATING TO TRIALS.

ARTICLE I.

Exceptions.

Exceptions Defined—Must Be Material.

3285. SEC. 190. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

Bill of exception on appeal, Sec. 3860.

1. OBJECTIONS TO EVIDENCE TO BE MADE PROMPTLY. If apparent when offered, it should be made then; if the evidence, apparently admissible when offered, is shown by subsequent developments to be exceptionable, the objection should then be made in the form of a motion to strike out. Sharon v. Minnock, 6 Nev. 377.
2. OBJECTIONS TO EVIDENCE—WHERE AND HOW MADE. The supreme court on appeal will consider objections to the admission of evidence only upon the grounds specified in the lower court. Gooch v. Sullivan, 13 Nev. 78; Sharon v. Minnock, 6 Nev. 377, cited.
3. APPELLATE COURT WILL NOT CONSIDER OBJECTIONS where record fails to show exceptions to instructions to have been taken as required. McGurn v. McInnis, 24 Nev.
4. EVIDENCE ADMITTED WITHOUT OBJECTION. If evidence, secondary or hearsay in its character, be admitted without objection, no advantage can be taken of that fact afterward, and the jury may and should accept it as if it were admissible under the strictest rules of evidence. Sherwood v. Sissa, 5 Nev. 349; Watt v. Nev. Cen. R. Co., 23 Nev. 154.

See Jeffree v. Walsh, 14 Nev. 143; Leport v. Sweeney, 11 Nev. 387.

5. PAROL EVIDENCE AS TO WRITTEN AGREEMENT—Admitted Without Objection. Competent. Vietti v. Nesbitt, 22 Nev. 390.

6. **IRREGULARITIES OF PRACTICE NOT OBJECTED TO.** Though the proceedings of a district court are plainly irregular in point of practice, yet if no objection be made on that ground, such irregularity will not be considered in the supreme court. *Fitzpatrick v. Fitzpatrick*, 6 Nev. 63.
7. **FAILURE TO OBJECT TO WANT OF PROOF—Waiver of Proof.** *Sharon v. Minnock*, 6 Nev. 377.
- OBJECTIONS TO ADMISSION OF EVIDENCE—Too Late After Evidence Admitted.** *Id.*
8. **ERROR IN EXCLUDING TESTIMONY** cured at its admission at a subsequent stage of the trial. *Menzies v. Kennedy*, 9 Nev. 152; *Richardson v. Hoole*, 13 Nev. 492; *Smith v. N. A. M. Co.*, 1 Nev. 423; *Patchen v. Kelly*, 19 Nev. 404; *Winter v. Fulston*, 20 Nev. 260; *Mandlebaum v. Liebes*, 17 Nev. 131.
9. **TEST OF RELEVANCY OF EVIDENCE.** To ascertain whether evidence be relevant or not, it is only necessary to determine whether it has a tendency to establish a legitimate case or defense relied on. *State v. Rhoades*, 6 Nev. 352; *Wright v. Cradlebaugh*, 3 Nev. 341.
10. **OFFER OF PROOF—Must Show What Proof Is Offered.** *Morris v. McCoy*, 7 Nev. 399.
11. **EVIDENCE PROPERLY ADMITTED IF PERTINENT FOR ANY PURPOSE.** *Fulton v. Day*, 8 Nev. 80; *Richardson v. Hoole*, 13 Nev. 492; *Gardner v. Gardner*, 23 Nev. 207.

Exception Must Be Particularly Stated; Must Be Noted.

3286. SEC. 191. The point of the exception shall be particularly stated, and may be delivered in writing to the Judge, or, if the party require it, shall be written down by the Clerk. When delivered in writing or written down by the Clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing or written down as above, it may be entered in the Judge's minutes and afterwards settled in a statement of the case, as provided in this Act; *provided*, that if the Judge shall in any case refuse to allow an exception in accordance with the facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right so to do, in such mode and manner and according to such regulations as the supreme court may by rules impose, and such exceptions as are allowed by said supreme court shall become a part of the record of the cause.

1. **PARTICULAR GROUND OF EXCEPTION TO BE STATED** (Practice Act, Sec. 191), that the court may decide intelligently upon it, and the opposite party be afforded an opportunity of obviating the objection, if it be in his power to do so. *Sharon v. Minnock*, 6 Nev. 377; *Lightle v. Berning*, 15 Nev. 389; *McGurn v. McInnis*, 24 Nev.; *McNamee v. Neshitt*, 24 Nev.
2. **BILL OF EXCEPTIONS—WHEN MUST BE SETTLED AND SIGNED.** Under the statute (Sec. 190, *et seq.*) a bill of exceptions, in order to be available on motion for a new trial, or on appeal from the judgment, in a civil case, must be reduced to writing and settled by the Judge at or before the conclusion of the trial. *Burns v. Rodefer*, 15 Nev. 69.

No Form Required for Exception.

3287. SEC. 192. No particular form of exception shall be required; the objection shall be stated with so much of the evidence, or other matter, as is necessary to explain it, but no more, and the whole as briefly as possible.

When Exception Is Implied.

3288. SEC. 193. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II.

New Trials.

New Trial, What Is.

3289. SEC. 194. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court, or referees.

For What Cause Granted.

3290. SEC. 195. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the follow-

ing causes materially affecting the substantial rights of such party: First—Irregularity in the proceeding of the court, jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. Second—Misconduct of the jury. Third—Accident or surprise which ordinary prudence could not have guarded against. Fourth—Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial. Fifth—Excessive damages, appearing to have been given under the influence of passion or prejudice. Sixth—Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. Seventh—Error in law occurring at the trial and excepted to by the party making the application.

1. **NEW TRIALS NOT MATTERS OF DISCRETION.** The granting or refusing a new trial is not a matter of mere discretion. *Sacto. & M. M. Co. v. Showers*, 6 Nev. 291.
- "**TREATING THE JURY**" CAUSE OF REVERSAL. *Id.*
2. **LIQUOR USED BY JUROR**, during the progress of a trial, or after the case has been submitted, unless furnished by the party in whose favor the verdict is given, or unless it is shown that intoxicating effects were produced, is no ground for setting aside the verdict or awarding a new trial. *Richardson v. Jones & Denton*, 1 Nev. 405.
- Every irregularity on the part of a jury does not authorize the verdict to be set aside, unless the party complaining shows, by reasonable presumption at least, that he has been injured thereby. *Id.*
3. **SURPLUS MATTER IN VERDICT** no cause for new trial unless it appears from that surplus matter that the jury based their verdict on absurd reasoning or false premises. *Gregory v. Frothingham*, 1 Nev. 253.
4. **SURPRISE.** When a party applies for a new trial on the ground of surprise, he must show that he has evidence which, if introduced on a second trial, will probably change the result; or at least has evidence tending to rebut the point made by the other side which he complains of as a matter of surprise. *McClusky v. Gerhauser*, 2 Nev. 47.
5. **ACCIDENT AND SURPRISE—Affidavit When Insufficient—Probative Facts.** *Brown v. Warren*, 17 Nev. 417.
6. **MISTAKE AS TO MATERIAL FACTS.** A new trial may be granted for a mistake as to a material fact if the defeated party had no knowledge thereof until after the case was closed and ready for submission to the jury. *Sultan v. Sherwood*, 18 Nev. 454.
7. **NEWLY DISCOVERED EVIDENCE.** If bears upon main question and would be likely to change result, new trial should be granted. *Gray v. Harrison*, 1 Nev. 502.
8. **NEWLY DISCOVERED EVIDENCE—Materiality Of.** *Wall v. Trainor*, 16 Nev. 131.
9. **NEW TRIAL—NEWLY DISCOVERED EVIDENCE—DILIGENCE.** An affidavit for a new trial on the ground of newly discovered evidence which states that the attorney "diligently searched for testimony to establish the defense" is insufficient. It is too general. The acts performed should be particularly stated so as to enable the court to determine whether the conclusions stated are supported by the facts. *Pinschower v. Hanks*, 18 Nev. 99.
10. **NEWLY DISCOVERED EVIDENCE.** To justify a new trial on the ground of newly discovered evidence, three things must be shown: first, materiality of evidence; second, it could not by due diligence have been produced at the first trial; third, that it is not cumulative. *Howard v. Winters*, 3 Nev. 539.
- To justify the granting of a new trial on the ground of newly discovered evidence, the party applying for the relief should show clearly that the failure to produce evidence on the first trial was not the result of negligence on his part. *Id.*
11. **NEWLY DISCOVERED EVIDENCE—Diligence.** *Manning v. Gignoux*, 23 Nev. 322.
12. **EXCESSIVE DAMAGES.** *Barnes v. W. U. Tel. Co.*, 24 Nev.; *Roberts v. Webster*, 25 Nev. (on rehearing.)
13. **NO CONSIDERATION OF INSUFFICIENCY OF EVIDENCE ON APPEAL WHERE NO MOTION FOR NEW TRIAL.** This rule settled beyond discussion. *Conley v. Chedic*, 7 Nev. 336; *James v. Goodenough*, 7 Nev. 324; *Whitmore v. Shiverick*, 3 Nev. 288; *Cooper v. Pac. Mutual Ins. Co.*, 7 Nev. 116; *Burbank v. Rivers*, 20 Nev. 81.
14. **INSUFFICIENCY OF EVIDENCE—AGAINST LAW.** Application must be made upon statements prepared as statute requires. *Simpson v. Ogg*, 18 Nev. 28.
15. **NEW TRIAL STATEMENT FOR INSUFFICIENCY OF EVIDENCE SHOULD SHOW ALL THE EVIDENCE.** The statement will not be considered unless it affirmatively shows that it contains all the material evidence produced at the trial. *Sherman v. Shaw*, 9 Nev. 148.

See Sec. 3864; also, Appeals.

16. **GRANTING OR REFUSING NEW TRIAL—SOUND DISCRETION OF TRIAL JUDGE NOT DISTURBED BY APPELLATE COURT.** The granting or the refusal of a motion for a new trial on the ground that the evidence does not support the findings rests in the sound discretion of the trial Judge, and such order will not be disturbed by appellate courts when based upon conflicting evidence, and made in the exercise of a sound discretion. *Edwards v. Carson W. Co.*, 21 Nev. 469.
17. **CONFLICT OF EVIDENCE.** If a new trial is granted upon the ground that the evidence is insufficient to sustain the verdict, the action of the court will be sustained by the appellate court, if there is a substantial conflict in the evidence. *McLeod v. Lee*, 14 Nev. 398; *Margaroli v. Milligan*, 11 Nev. 96; *Worthing v. Cutts*, 8 Nev. 118; *Smith v. Mayberry*, 13 Nev. 427; *Phillipotts v. Blasdel*, 8 Nev. 61; *Treadway v. Wilder*, 9 Nev. 67; *Palmer v. Culverwell*, 24 Nev.; *State v. V. & T. R. Co.*, 24 Nev.; *Roberts v. Webster*, 25 Nev.
18. **STATEMENT ON NEW TRIAL—SPECIFICATION OF INSUFFICIENCY OF EVIDENCE.** On motion for new trial on the ground of insufficiency of the evidence, it is indispensable in the statement to designate the particulars in which the insufficiency consists. *Caldwell v. Greely*, 5 Nev. 258; *Elder v. Shaw*, 12 Nev. 78.
- N. B.* This rule has been changed. See Sec. 3864; *Watt v. N. C. R. Co.*, 23 Nev. 156; *Beck v. Thompson*, 22 Nev. 109.
19. **VERDICT CONTRARY TO LAW—NEW TRIAL.** The court properly instructed the jury as to the measure of damages, and they brought in a verdict contrary to such instruction; *Held*, that the court properly granted a new trial. *Hoffman v. Bosch*, 18 Nev. 360.
20. **FINDINGS OR DECISION OF COURT AGAINST LAW—NEW TRIAL PROPER REMEDY.** The decision is against law if it is contrary to, or inconsistent with, the case made and embraced within the issue. *Marshall v. G. F. M. Co.*, 16 Nev. 156.
21. **ERRORS OF LAW TO BE POINTED OUT IN STATEMENTS.** A statement on motion for new trial on the ground of errors in law must particularly designate the errors relied on, otherwise it will be disregarded. *Caldwell v. Greely*, 5 Nev. 258; *McWilliams v. Herschman*, 5 Nev. 263.

Application, How Made.

3291. SEC. 196. When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause, it shall be made upon a statement prepared as provided in the next section.

ERROR TO GRANT NEW TRIAL where there is no affidavit and no statement in support of motion. *Whitmore v. Shiverick*, 3 Nev. 288.

Proceedings in Moving for New Trial—Time of Notice in Which Affidavit or Statement to Be Filed—Errors Specified—Settlement of Statement—Identification.

3292. SEC. 197. The party intending to move for a new trial shall give notice of the same, as follows: When the action has been tried by a jury, within five days after the rendition of the verdict, and when the action has been tried by the court or by a referee, within ten days after receiving written notice of the rendering of the decision of the Judge or of the filing the report of the referee, the notice shall designate generally the grounds upon which the motion will be made. Within five days after giving such notice the said party shall prepare and file with the Clerk the affidavit or statement required by the last section. A copy of the affidavit shall, on the same day, be served on the adverse party. The party preparing the statement shall number the pages and lines thereof, and, after having filed the same with the Clerk, and had such filing entered and endorsed, shall serve the same on the adverse party, on the same day, who may propose amendments thereto, referring to the page and line of the statement, and shall, within five days after the service on him of the statement, file his amendment with the Clerk, and, after having such filing entered and endorsed, shall, on the same day, serve the same, with the statement, upon the moving party, who shall, within five days thereafter, give written notice to the adverse party if he declines admitting the amendments, or they shall be deemed accepted. At any time thereafter either party may have the statement settled by the Judge or referee upon two days' notice thereof to the other party. If no affidavit or statement be filed within five days after the notice for a new trial, the right to move for a new trial

shall be waived. When the notice designates, as the ground upon which the motion will be made, the insufficiency of the evidence to justify the verdict or other decision, it shall be a sufficient assignment of error to specify that the verdict of the jury, or the decision, or judgment, or decree of the court, is not supported by the evidence, or is contrary to the evidence. In such case, where it appears that the evidence, taken altogether, does not support the verdict, or decision, or judgment, or decree of the court, a new trial shall be granted, or, upon appeal, the case shall be reversed without regard to whether there are express findings upon all the issues, or whether the specifications particularly point out the finding or findings, either express or implied, that are not supported by the evidence, or are contrary thereto. When the notice designates, as the ground of the motion, error in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded. The statement shall contain so much of the evidence or reference thereto as may be necessary to explain the particular points thus specified, and no more. When the statement is agreed to it shall be accompanied with the certificate, either of the parties themselves in fact or their attorney, that the same has been agreed upon and is correct. When settled by the Judge or referee, it shall be accompanied with his certificate that the same has been allowed by him and is correct. When no amendments have been filed, the statement shall be accompanied with the certificate of the Clerk of that fact. On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, testimony taken and written out by a shorthand reporter authorized by the court to make the same, and the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter affidavits on the hearing. Any counter affidavit shall be filed with the Clerk, and copies served on the moving party, at least two days previous to the hearing. The affidavits and counter affidavits, or the statement thus used in connection with such pleadings, depositions, documentary evidence on file, testimony taken by a reporter, and minutes of the court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits, it shall be sufficient for the Judge or Clerk to indorse them at the time as having been read or referred to on the hearing. To identify any depositions, documentary evidence on file, testimony taken by a reporter, or minutes of the court read or referred to on the hearing, it shall be sufficient that the Judge designate them as having been read or referred to in his certificate to be for that purpose by him made thereon. The several periods of time limited may be enlarged by the written agreement of the parties, or upon good cause shown, by the court or the Judge before whom the cause was tried. *As amended, Stats. 1893, 88.*

For Act concerning statement on motion for new trial, see Sec. 3864.

1. **STATEMENT MUST BE FILED IN TIME.** A statement on motion for new trial which was not filed within the time allowed by law should, on motion, be stricken out. (*Williams v. Rice*, 13 Nev. 235, affirmed.) *Harrison v. Lockwood*, 14 Nev. 263; *Robinson v. Benson*, 19 Nev. 331; *G. F. M. Co. v. Cable Con. Co.*, 15 Nev. 450.
2. **STATEMENT MUST BE MADE WITHIN STATUTORY TIME.** *Tull v. Anderson*, 15 Nev. 426.
3. **ASSIGNMENT OF ERROR—Insufficiency of Evidence—Findings of Fact—Above Section (197) Construed.** *Watt v. N. C. R. Co.*, 23 Nev. 156; *Beck v. Thompson*, 22 Nev. 109.
4. **THE METHOD OF MAKING AND SETTLING STATEMENTS ON MOTION FOR NEW TRIAL COMMENTED ON.** *Levy v. Fargo*, 1 Nev. 417; *Bliss v. Grayson*, 24 Nev.; *Hoppin v. Cheney*, 24 Nev.
5. **PRACTICE ACT, SECTION 197—MEANING OF "SETTLED" IN JUDGE'S CERTIFICATE.** The express requirement of the statute, that a Judge's certificate to a settled statement on motion for a new trial shall affirm its correctness (*Practice Act*, Sec. 197) does not preclude such presumptions as fairly arise from the language actually employed; so that when a Judge certifies that he has settled a statement, he in effect certifies that it is a true and correct statement. *Overman S. M. Co. v. American M. Co.*, 7 Nev. 312.

6. **STIPULATION OF COUNSEL IGNORING THE POSITIVE REQUIREMENTS OF LAW WILL BE DISREGARDED.** April Fool M. Co. v. Dooley, 24 Nev.
 7. **NEW TRIAL ORDER REVERSED, IF NOT SUPPORTED.** On appeal from an order granting a new trial, if the affidavits upon which it was granted are not identified so as to entitle them to be considered, the order, having no foundation, will be reversed. Dean v. Pritchard, 9 Nev. 232; Albion M. Co. v. Richmond Co., 19 Nev. 225; Hoppin v. First Nat. Bank, 24 Nev.
 8. **CERTIFICATE OF JUDGE TO STATEMENT.** If it be stated in a statement that it contains all the material evidence, the certificate of the Judge to the correctness of the statement is sufficient to establish that fact; but a certificate that a statement is correct does not show that it contains all the evidence when that fact is not stated in it. Sherwood v. Sissa, 5 Nev. 349.
 9. **STATEMENT NOT CONTAINING ALL THE EVIDENCE.** Where the statement does not show that it contains all the evidence, it will be presumed that the findings were supported by the evidence. Gammans v. Roussell, 14 Nev. 171; Mandlebaum v. Liebes, 17 Nev. 131; W. P. Co. v. Herrick, 19 Nev. 311; Howard v. Winters, 3 Nev. 539; Terry v. Berry, 13 Nev. 514; Greeley v. Holland, 14 Nev. 320; Bowker v. Goodwin, 7 Nev. 135; Libby v. Dalton, 9 Nev. 23; Lonkey v. Wells, 16 Nev. 271; McLeod v. Lee, 17 Nev. 103; Caples v. C. P. R. Co., 6 Nev. 265; In Re Winkleman, 9 Nev. 303.
See Bailey v. Papina, 20 Nev. 177. See Sec. 3864.
 10. **EVIDENCE TO BE INSERTED.** When appellant does not rely upon the "insufficiency of the evidence," it is only necessary to insert so much of the evidence as is necessary to explain the particular errors relied on. Rose v. Richmond M. Co., 17 Nev. 25.
 11. **STATEMENT—PARTICULARS MUST BE STATED.** A statement must specify the particulars in which the evidence is alleged to be insufficient, or it will be disregarded. Dick v. Bird, 14 Nev. 161; Lamance v. Byrnes, 17 Nev. 197; Rosina v. Trowbridge, 20 Nev. 105.
 12. **OBJECTION TO EVIDENCE—Grounds of Must Be Stated.** Rosina v. Trowbridge, 20 Nev. 105.
 13. **FINDINGS—DOCUMENTARY EVIDENCE MUST BE EMBODIED IN A STATEMENT.** Neither the findings of the court below, nor the documentary evidence admitted at the trial will be considered in the appellate court unless embodied in the statement or identified as required by statute. Hanson v. Chiatovich, 13 Nev. 395; Alderson v. Gilmore, 13 Nev. 84; Bowker v. Goodwin, 7 Nev. 135; Beck v. Truckee Lodge, 18 Nev. 246; Simpson v. Ogg, 18 Nev. 28; Imp. S. M. Co. v. Barstow, 5 Nev. 252; Corbett v. Job, 5 Nev. 201; Nesbitt v. Chisholm, 16 Nev. 400.
 14. **JUDGMENT OF NONSUIT—SPECIFICATION OF ERROR.** Held, sufficient. Brown v. Warren, 16 Nev. 228.
 15. **ASSIGNMENT OF ERRORS—When Sufficient.** Jones v. Adams, 17 Nev. 84.
 16. **MANNER OF INSERTING TESTIMONY IN STATEMENT—Use of Word "Proved."** Wilson v. Hill, 17 Nev. 401.
 17. **ADJOURNMENT FOR TERM—NOTICE SERVED.** When notice of intention to move for new trial is served within two days after judgment, and followed up by statement, etc., as the statute prescribes, the court retains jurisdiction of the case so far as to be able to dispose properly of the motion for new trial, although the court may have adjourned for the term between the day judgment was rendered and the filing of notice, without making any order retaining the jurisdiction over the case. Killip v. Empire Mill Co., 2 Nev. 34.
No NOTICE. But if term expires, and no notice of intention to move for a new trial is filed within the statutory time, then the court loses jurisdiction of the case. Id.
NOTICE must be in writing, or in open court, and a minute made of it. Id.
See State v. Bank of Nevada, 4 Nev. 358.
 18. **NEW TRIAL—NOTICE—TRIAL WITHOUT JURY—DECISION OF COURT DISTINCT FROM FINDINGS.** Time within which notice must be given begins to run from the announcement of judgment. Robinson v. Benson, 19 Nev. 331; Elder v. Frevert, 18 Nev. 278; Stanton-Thompson Co. v. Craine, 25 Nev.; Duffy v. Moran, 12 Nev. 98.
 19. **NOTICE OF MOTION FOR NEW TRIAL, WITHOUT SPECIFYING GROUNDS, INSUFFICIENT.** A notice of motion for new trial, which fails to designate the grounds upon which the motion will be made, is insufficient. Street v. Lemon M. & M. Co., 9 Nev. 251.
- DEFECTIVE NOTICE FOR NEW TRIAL NOT HELPED BY STATEMENT.** The language of Section 197 of the Practice Act, requiring a notice of motion for new trial to "designate generally the grounds upon which the motion will be made," is clear, plain and explicit; and a disregard of it is not helped out by designating the grounds in the statement. Id.

20. **NEW TRIAL STATEMENT NEED NOT DESIGNATE GENERAL GROUNDS.** A statement on motion for new trial need not designate the general grounds of error relied on, but only specify the particulars wherein the error lies—the Practice Act requiring the notice to designate the general grounds, and the statement to contain the specifications. *Worthing v. Cutts*, 8 Nev. 118.
21. *Hoopes v. Meyer*, 1 Nev. 443, and *Gillig v. Lake Bigler Road Company*, 2 Nev. 214, on the point that a statement is not required to specifically state the errors relied on, disapproved. *Corbett v. Job*, 5 Nev. 210; *Roberts v. Webster*, 24 Nev.
22. **EVIDENCE, WHEN NOT REVIEWED.** The supreme court will not review the evidence in the absence of a regular statement on motion for a new trial. *State v. Sadler*, 21 Nev. 13.
23. **STATEMENT MUST BE AUTHENTICATED.** A statement on motion for a new trial will not be considered on appeal unless it is authenticated in the mode prescribed by statute. *Jones v. Adams*, 18 Nev. 60; *White v. White*, 6 Nev. 20; *Solomon v. Fuller*, 13 Nev. 276.
24. **AUTHENTICATION OF STATEMENT.** A certificate of the Clerk, to the effect that no amendments to the statement have been filed, is such an authentication as is required by Section 197. *Borden v. Bender*, 16 Nev. 49; *Fuller v. Anderson*, 15 Nev. 426.
25. **NAMING A PAPER DOES NOT ENDORSE ITS CORRECTNESS AS SUCH.** *White v. White*, 6 Nev. 20.
26. **IDENTIFICATION OF AFFIDAVITS USED ON MOTION FOR NEW TRIAL.** To entitle affidavits, used on motion for new trial, to be considered on appeal in the supreme court, they must be identified by indorsement of the Judge or Clerk, made "at the time" of use; and a certificate made after appeal taken, will not avail. *Dean v. Pritchard*, 9 Nev. 232; *Albion M. Co. v. Richmond M. Co.*, 19 Nev. 225.
27. **CERTIFICATE OF JUDGE TO STATEMENT FOR NEW TRIAL.** Where a District Judge certified at the end of a statement "that the foregoing is the settled and engrossed statement on motion for new trial of the above entitled cause": *Held*, that though not a literal compliance with the statute, such certificate was a substantial compliance and sufficient. *Overman M. Co. v. Am. M. Co.*, 7 Nev. 312.
- PRESUMPTIONS IN FAVOR OF JUDGE'S CERTIFICATE.** *Id.*
28. **IDENTIFICATION OF DOCUMENTS—When Sufficient.** *Martens v. Gilson*, 13 Nev. 489; *Marshall v. G. F. M. Co.*, 16 Nev. 156; *Bliss v. Grayson*, 24 Nev.
29. **DEFECTS IN CLERK'S CERTIFICATE AND NOTICE ON MOTION FOR NEW TRIAL WAIVED, WHEN.** *Bliss v. Grayson*, 24 Nev.
30. **WAIVER OF RIGHT TO OBJECT TO PROPOSED AMENDMENTS—Statement on Motion for New Trial, When.** *Hoppin v. Cheney*, 24 Nev.
- POWER OF COURT TO MAKE STATEMENT CONFORM TO TRUTH.** *Id.*
31. **STATEMENT—OBJECTIONS TO, WHEN WAIVED.** When counsel appear and orally argue a case upon its merits and afterwards, by leave of the court, file a brief and therein rely upon objections to the statement: *Held*, that the oral argument upon the merits amounted to a waiver of the objections to the statement. *Truckee Lodge v. Wood*, 14 Nev. 293; *Sweeney v. Hjul*, 23 Nev. 409.
32. **Facts Must Be Embodied in Statement.** *State v. C. P. R. Co.*, 17 Nev. 259.
33. **STATEMENT ON MOTION FOR NEW TRIAL—SETTLED IN TRIAL COURT—APPELLATE COURT ON MOTION CANNOT CORRECT, ALTER, OR AMEND.** The statement having been settled and certified by the District Judge, according to the statute, this court has no power to alter or amend it. *Gardner v. Brown*, 22 Nev. 156.
34. **ADMISSION BY RESPONDENT'S ATTORNEY** that a statement on motion for new trial is correct, does not admit such statement to contain all the evidence offered in the case, where the statement itself does not purport to contain it all. It can only be held to be an admission that so far as the evidence is stated, it is stated correctly. It does not negative the idea of other evidence having been given. *Howard v. Winters*, 3 Nev. 539.
35. **STATEMENT SHOULD BE COMPLETE.** Map referred to should be included. *Hamburg M. Co. v. Stephenson*, 17 Nev. 449.
36. **AMENDMENTS SHOULD BE LIBERALLY ALLOWED.** Courts should be liberal in allowing amendments to defective statements on motion for new trial, etc., and should themselves suggest them whenever a defect or deficiency is apparent. *Caldwell v. Greely*, 5 Nev. 284.
37. **STATEMENT ON MOTION FOR NEW TRIAL CANNOT BE CERTIFIED TO AFTER APPEAL IS TAKEN—Effect of Order Prematurely Made.** *Thomas v. Sullivan*, 11 Nev. 280; *Caples v. C. P. R. Co.*, 6 Nev. 268.
38. **NEW TRIAL—PREMATURE RULING UPON.** A motion for new trial, when made upon a statement, should not be ruled upon until the statement has been settled and authenticated. If done, the ruling is irregular and premature, and should be vacated upon motion. *Crosby v. N. B. S. M. Co.*, 23 Nev. 70.

MOTION FOR SUBMITTED, HOW VACATED. Where a motion for new trial has been regularly submitted upon a sufficient statement, a ruling thereon cannot be subsequently vacated on motion, but the only remedy is by appeal. *Id.*

39. **STATEMENT FOR NEW TRIAL—SPECIFICATION OF ERROR.** In a statement on motion for a new trial, which contains the charge of the Judge as an entirety, a specification of error, "that the court erred in giving to the jury the instructions as set forth in this statement," is sufficient. *Ellis v. C. P. R. R. Co.*, 5 Nev. 255.

40. **STATEMENT.** When a party in assigning errors, or stating the grounds on which he will move for a new trial, says that the court erred in doing a certain thing, this is no evidence that the court did as charged. To establish that fact, it must appear in the statement of facts. The assignment of errors, and the statement of the facts or evidence to sustain these alleged errors, are separate and distinct things. The party moving for a new trial may state the errors complained of in his own language. Neither the court nor the opposite party can correct that. The court can only correct the statement of facts or evidence. *Fleeson v. Savage M. Co.*, 3 Nev. 157; *McGurn v. McInnis*, 24 Nev.

41. **STATEMENT ON MOTION FOR NEW TRIAL—SETTLEMENT OF BY JUDGE OR REFEREE—PRACTICE.** In a case tried before a referee, where all the proceedings are reported to the court, the statement on motion for a new trial may be settled by the Judge. *Marshall v. G. F. M. Co.*, 16 Nev. 156.

42. **STATEMENT, WHEN CONSIDERED "USED" IN THE COURT BELOW.** If prepared, settled and on file in Clerk's office. *State v. C. P. R. Co.*, 17 Nev. 259.

FACTS MUST BE EMBODIED IN STATEMENT, to be considered on appeal. *Id.*

ORDER OVERRULING MOTION FOR NEW TRIAL NEED NOT BE EXCEPTED TO. *Id.*

43. **NEW TRIAL—STATEMENT—WHEN MUST BE FILED—WAIVER.** A failure to file a statement within five days after giving notice of intention to move for a new trial, nothing having been done in the meantime to retain jurisdiction, operates as a waiver of the right to move for a new trial, and no power exists in the district court to reinstate this right. *Elder v. Frevert*, 18 Nev. 278; *Hoppin v. Cheney*, 24 Nev.

44. **MOTION FOR NEW TRIAL—WAIVER OF NOTICE OF DECISION.** If he proceed in the case upon actual knowledge of such decision, he waives his right to written notice. *Corbett v. Swift*, 6 Nev. 194.

TIME TO MOVE FOR NEW TRIAL—Practice Act, Section 197. *Id.*

45. **WAIVER OF ERROR TO BE SHOWN BY PARTY CLAIMING WAIVER.** *McWilliams v. Herschman*, 5 Nev. 263; *White v. White*, 6 Nev. 20.

46. **EXTENDING TIME TO FILE STATEMENT ON MOTION FOR NEW TRIAL.** An order signed by the Judge extending the time fixed by statute for filing a statement on motion for a new trial, must not only be signed, but must be filed with the papers in the case, or entered of record in the minutes of the court, within the time prescribed by statute. *Clark v. Strouse*, 11 Nev. 76.

47. **IN AN EQUITY CASE,** this court may order the proper decree to be entered in the court below without the formality of a new trial. *Feusier v. Sneath*, 3 Nev. 120.

48. **NEW TRIAL, WHEN TO BE GRANTED BY NISI PRIUS COURT.** A Judge who tries a cause should not hesitate to set aside the verdict, where there is a clear preponderance of evidence against it. *Phillipotts v. Blasdel*, 8 Nev. 61.

49. A verdict will not be set aside merely because it is against the weight of evidence. *Bryant v. Carson Lumbering Co.*, 3 Nev. 313.

50. **NEW TRIAL OF PORTION OF THE ISSUES IN ACTION FOR DIVORCE—May Be Granted.** *Lake v. Bender*, 18 Nev. 361.

51. **ORDER GRANTING NEW TRIAL—WHEN IT WILL BE SUSTAINED.** Where, on appeal from an order granting a new trial, the record shows that the motion was made upon two grounds, without showing upon which of them the action was based, the order will be affirmed, if the action of the court can be sustained upon either ground. *McLeod v. Lee*, 14 Nev. 398.

52. **NEW TRIAL—IMPROPERLY GRANTED.** When judgment and verdict are in accordance with evidence, no substantial conflict in it upon material issue and no error, court has no right to grant new trial. *Lawrence v. Burnham*, 4 Nev. 361; *Scott v. Haines*, 4 Nev. 426.

53. **NEW TRIAL—WHEN SHOULD NOT BE GRANTED.** A new trial ought not to be granted on a motion to set aside a verdict, merely because the court had erred in finding a fact in some preliminary proceeding in the case. *Solomon v. Fuller*, 14 Nev. 63.

54. **DISTINCTION AS TO WEIGHT OF EVIDENCE ON NEW TRIAL AND ON APPEAL.** *State v. Yellow Jacket*, 5 Nev. 415.

55. **NEW TRIAL—APPEAL FROM JUSTICE COURT—JURISDICTION OF DISTRICT COURT.** After a verdict rendered in the district court upon the trial of a case appealed from a justice's court, the district court has jurisdiction, when a proper showing is made, to grant a new trial. *Koppe v. Second Judicial District Court*, 23 Nev. 343.

Application for New Trial, When to Be Made.

3293. SEC. 198. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the court or Judge granting or refusing a new trial shall state in writing generally the grounds upon which the same is granted or refused.

Bliss v. Grayson, 24 Nev.

CHAPTER 8—THE MANNER OF GIVING AND ENTERING JUDGMENT.

Judgment, How Entered.

3294. SEC. 199. When trial by jury has been had, judgment shall be entered by the Clerk in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

PROPER PRACTICE IN ENTERING JUDGMENT. *Per BEATTY, J. Howard v. Richards*, 2 Nev. 123.

Argument.

3295. SEC. 200. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Counterclaim to Defendant, or Affirmative Relief to Plaintiff.

3296. SEC. 201. If a counterclaim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Recovery of Personal Property—Judgment.

3297. SEC. 202. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention or the value of the use thereof. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same, or the value of the use thereof. In an action on a contract or obligation for the direct payment of money, payable in a specified or agreed kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the court or referee, may follow the contract or obligation, and be made payable in the kind of money or currency therein specified or thereby agreed. And in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judgment for the plaintiff, whether the same be by default or after verdict, or decision of the court or referee, may be made payable in the same kind of money or currency so received by such person; and in all cases of damage the judgment shall be for gold coin.

1. **IN ACTION OF REPLEVIN**, the judgment must be for the return of the property and an alternative judgment for its value if not returned. An absolute judgment for its value, not allowing defendant to satisfy the judgment by return of the property with costs and damages, is erroneous. *Lambert v. McFarland*, 2 Nev. 58.

2. **GOLD COIN JUDGMENT PROPER.** *Clark v. Nevada L. & M. Co.*, 6 Nev. 203.

Judgment Book to Be Kept.

3298. SEC. 203. The Clerk shall keep among the records of the court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

Death of Party Not to Affect Judgment.

3299. SEC. 204. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Judgment Roll, What to Constitute.

3300. SEC. 205. Immediately after entering the judgment the Clerk shall attach together and file the following papers, which shall constitute the judgment roll: First—In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with the memorandum indorsed on the complaint that the default of the defendant in not answering was entered, and a copy of the judgment. Second—In all other cases the summons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties.

Lien of Judgment, Continuance Of.

3301. SEC. 206. Immediately after filing a judgment roll the Clerk shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it shall become a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal or action of the court or defendant shall not be computed.

Docket, How Kept.

3302. SEC. 207. The docket mentioned in the last section is a book which the Clerk shall keep in his office, with each page divided into columns: Judgment debtors; judgment creditors; judgment; time of entry; where entered in judgment book; appeals; when taken; judgment of appellate court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

Open for Inspection.

3303. SEC. 208. The docket kept by the court shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the Clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript May Be Filed in Other Counties.

3304. SEC. 209. A transcript of the original docket certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment shall become a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied. But the time during which the execution of the judgment is suspended by appeal, or action of the court or defendant, shall not be computed.

Satisfaction of Judgment, Entry Of.

3305. SEC. 210. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or within one year after the judgment, by the attorney, unless a revocation of his authority be previously

filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

WHEN JUDGMENT CREDITOR MAY BE ORDERED TO SATISFY JUDGMENT. It is only when a judgment is satisfied "otherwise than upon execution" (Practice Act, Sec. 210) that a court may order the judgment creditor to make acknowledgment of that fact. *Sweeney v. Hawthorne*, 6 Nev. 129.

TITLE VII.

All the provisions of this title relative to the duties of the Sheriff upon execution are made applicable to Constables by Section 560 of this Act.

Of the Execution of the Judgment in Civil Actions.

CHAPTER 1—THE EXECUTION.

Writ to Issue, Time For.

3306. SEC. 211. The party in whose favor judgment is given, may, at any time within six years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter. *As amended, Stats. 1889, 26.*

EXECUTION MUST BE AUTHORIZED BY THE JUDGMENT, and must follow it in every essential particular, not only as to material matters of form, but also as to the amount for which it is rendered. *Hastings v. Johnson*, 1 Nev. 613; *Solen v. V. & T. K. Co.*, 14 Nev. 405.

Execution—Form of Writ—To Whom Issued—What Commanded.

3307. SEC. 212. The writ of execution shall be issued in the name of the State of Nevada, sealed with the seal of the court, and subscribed by the Clerk, and shall be directed to the Sheriff; and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the name of the parties, the judgment, and if it be for money, the amount thereof, and the amount actually due thereon; and if made payable in a specified kind of money or currency, as provided in section two hundred and two, the execution shall also state the kind of money or currency in which the judgment is payable, and shall require the Sheriff substantially as follows: First, if it be against the property of the judgment debtor, it shall require the Sheriff to satisfy the judgment with interest, out of the personal property of such debtor, and, if sufficient personal property cannot be found, then out of his real property; or, if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the Recorder of such county, stating such day, or at any time thereafter; second, if it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the Sheriff to satisfy the judgment, with interest, out of such property; third, if it be against the person of the judgment debtor, it shall require the Sheriff to arrest such debtor, and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law; fourth, if it be issued on a judgment made payable in a specified kind of money or currency, as provided in section two hundred and two, it shall also require the Sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the Sheriff shall refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution; the Sheriff collecting money or currency in the manner required by this Act shall pay to the plaintiff, or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment

creditor in three times the amount of the money so collected; fifth, if it be for the delivery of the possession of real or personal property, it shall require the Sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section.

SHERIFF HAS NO AUTHORITY to put a party in possession of land not described in complaint or judgment. *Bullion M. Co. v. Ceresus Co.*, 2 Nev. 168.

Judgment on Joint Contract—Writ of Execution.

3308. SEC. 213. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the Sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served, or who appeared in the action. In other respects the writ shall contain the directions specified in subdivisions one and four of the last section.

Execution, When Returnable.

J. C.

3309. SEC. 214. The execution may be returnable at any time not less than ten nor more than sixty days after its receipt by the Sheriff, to the Clerk with whom the judgment roll is filed.

Sections 214, 215, and from 217 to 236, both inclusive, are made applicable to justices' courts by Section 560 of this Act.

Payment of Money, How Enforced.

J. C.

3310. SEC. 215. Where a judgment requires the payment of money, or the delivery of real or personal property, the same shall be enforced in those respects by execution.

Acts May Be Enforced.

3311. SEC. 216. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced.

Execution May Issue After Death of Party.

J. C.

3312. SEC. 217. Notwithstanding the death of a party after the judgment, execution thereon may be issued, in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, to the court in which the judgment was rendered, and in case of the death of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued against such property, in the same manner and with the same effect as if he were still living.

Execution to Different Counties.

J. C.

3313. SEC. 218. Where the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in the state. Where it requires the delivery of real or personal property, it shall be issued to the Sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

WHO MAY ISSUE EXECUTION—Sections 218 and 557 Construed. *Application of Rourke*, 13 Nev. 256.

What Liable to Execution.

J. C.

3314. SEC. 219. All goods, chattels, moneys, and other property, real and

personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached in execution, in like manner as upon writs of attachment. Gold dust and bullion shall be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property shall not be affected by the execution.

ESTATE OF DECEASED PERSONS—WHEN EXECUTOR CANNOT BE GARNISHED—CLAIMS—LEVY AND SALE. In an estate, where no order for distribution has been made, neither the executor or administrator is liable to the process of garnishment, nor can an allowed and approved claim against the estate be levied upon and sold under an execution against the claimant. *Norton v. Clark*, 18 Nev. 247.

Property Claimed by Third Party—Claim, How Tried.

J. C.

3315. SEC. 220. If the property levied on be claimed by a third person as his property, the Sheriff shall summon from his county six persons qualified as jurors between the parties, to try the validity of the claim. He shall also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses shall be sworn by the Sheriff, and if their verdict be in favor of the claimant, the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff, and the witnesses shall be paid by the claimant, if the verdict be against him; otherwise by the plaintiff.

What Exempt from Execution—Exception.

J. C.

3316. SEC. 221. The following property shall be exempt from execution except as herein otherwise specially provided:

First—Chairs, tables, desks and books to the value of one hundred dollars, belonging to the judgment debtor.

Second—Necessary household table and kitchen furniture belonging to the judgment debtor, including stove, stovepipe and stove furniture, wearing apparel, beds, bedding and bedsteads, and provisions and firewood actually provided for individual or family use sufficient for one month.

Third—The farming utensils or implements of husbandry of the judgment debtor; also, two oxen or two horses or two mules, and their harness, two cows and one cart or wagon, and food for such oxen, horses, cows or mules for one month; also all seed, grain or vegetables, actually provided, reserved or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value two hundred dollars.

Fourth—The tools and implements of a mechanic or artisan necessary to carry on his trade; the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their profession, with their scientific and professional libraries, and the law libraries of an attorney or counselor, and the libraries of ministers of the gospel.

Fifth—The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars, also his sluices, pipes, hose, windlass, whim, derrick, cars, pumps, tools, implements and appliances necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and two horses, mules or oxen, with their harness, and food for such horses, oxen or mules for one month, when necessary to be used for any whim, windlass, derrick, car, pump or hoisting apparatus.

Sixth—Two oxen, two horses or two mules and their harness, and one cart or wagon, by the use of which a cartman, huckster, peddler, teamster or other laborer habitually earns his living; and one horse with vehicle and harness or other equipments used by a physician or surgeon or minister of the gospel in making his professional visits, and also food for such oxen, mules or horses for one month.

For every livery stable keeper, two horses or mules, with vehicle and harness; *provided*, the whole shall not exceed in value five hundred dollars.

Seventh—One sewing machine, not exceeding in value one hundred and fifty dollars, in actual use by the debtor or his family.

Eighth—All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department now existing, or which may be, under the laws of this state, hereafter organized.

Ninth—All arms, uniforms and accoutrements required by law to be kept by any person.

Tenth—All court houses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the court house, jail and public offices, belonging to any county of this state; all cemeteries, public squares, parks and places, and public buildings, town halls, public markets, buildings for the use of the fire departments, and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company now existing, or which may be, under the laws of the state, hereafter organized.

Eleventh—No article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon. *As amended, Stats. 1887, 78.*

1. PROPERTY EXEMPT—Teamster. Elder v. Williams, 16 Nev. 416.

DEBTOR HAS RIGHT TO SELECT EXEMPT PROPERTY. Id.

FRAUDULENT CONCEALMENT of other property does not deprive debtor of rights under exemption law. Id.

2. EXEMPTIONS—STALLIONS AND WORK HORSES—STATUTORY CONSTRUCTION. A stallion kept for breeding purposes, and not used as a work horse, is not exempt from execution. The legislature intended by that paragraph to exempt to the debtor such animals as would be useful in assisting him to gain a livelihood by farming, etc., as ordinarily conducted. Kreig v. Fellows, 21 Nev. 307.

Satisfaction of the Execution.

J. C.

3317. SEC. 222. The Sheriff shall execute the writ against the property of the judgment debtor by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorneys so much of the proceeds as will satisfy the judgment, or depositing the amount with the Clerk of the Court. Any excess in the proceeds over the judgment and the Sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the Sheriff's fees within the view of the Sheriff, he shall levy only on such part of the property as the judgment debtor may indicate; *provided*, that the judgment debtor may indicate at the time of the levy such part; *and, provided*, that the property indicated be amply sufficient to satisfy such judgment and fees.

1. DAMAGES—Seizure of Property Exempt from Execution—Evidence—Wages of Barber Inadmissible. Hammersmith v. Avery, 18 Nev. 225.

VALUE OF PROPERTY—Offer—Right of Exemption—Personal Privilege. Id.

2. SEIZURE OF PROPERTY EXEMPT FROM EXECUTION—LIABILITY OF EXECUTION CREDITOR—PARTIES TO ACTION OF TRESPASS. An execution creditor, under whose direction a levy is unlawfully made, is liable and may be sued with the Sheriff in an action to recover damages for the trespass. Elder v. Frevert, 18 Nev. 446.

MEASURE OF DAMAGES FOR DETENTION OF PROPERTY. The measure of damages for the detention of two horses and a wagon, exempt from execution, is the value of the use of the property during the period of detention. Id.

Sale of Property on Execution—What Notice Necessary.

J. C.

3318. SEC. 223. Before the sale of property on execution, notice thereof shall

be given as follows: First—In cases of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property. Second—In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than five nor more than ten days, successively, and, in case of sale on execution issuing out of a district court, by the publication of a copy of said notice at least once a week, for the same period, in a newspaper, if there be one, in the county. Third—In case of real property, by posting a similar notice particularly describing the property, for twenty days, successively, in three public places of the township or city where the property is situated, and also where the property is to be sold; and also by publishing a copy of said notice once a week, for the same period, in a newspaper, if there be one, in the county; *provided*, that the cost of such publication shall in no case exceed the sum of two dollars and fifty cents per square for the first insertion, and one dollar per square for each subsequent insertion; *and, provided further*, that in any case where the paper authorized by this Act to publish such notice of sale shall neglect or refuse, from any cause, to make such publication, then the posting of notices, as provided in the preceding section of this Act, shall be deemed sufficient notice; *provided, further*, notices of the sale of property on execution, upon a judgment for any sum less than five hundred dollars, exclusive of costs, shall be given only by posting in three public places in the county, one of which notices shall be posted at the court house. *As amended, Stats. 1873, 75.*

Selling Without Notice, Liability For.

J. C.

3319. SEC. 224. An officer selling without the notice prescribed by the last section, shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars to the aggrieved party.

Sale Under Execution, How Made.

J. C.

3320. SEC. 225. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be in view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. All sales of real property shall be made at the court house of the county in which the property or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold. When such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, the Sheriff shall be bound to follow such directions.

All sales of real property on execution issued out of justices' courts shall be made at or upon the property sold. Section 560 of this Act.

Party Refusing to Pay Bid, Liability.

J. C.

3321. SEC. 226. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder, after again giving the notice hereinbefore provided; and if any loss be occasioned thereby from the purchaser refusing to pay

his bid, the officer may recover the amount of such loss, with costs, for the benefit of the party aggrieved, by motion upon previous notice of five days to such purchaser, before any court of competent jurisdiction.

Proceedings Against Party Refusing Bid.

J. C.

3322. SEC. 227. Such court shall proceed in a summary manner in the hearing and disposition of such motion, and give judgment and issue execution therefor forthwith, but the refusing purchaser may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

PAYMENT ON PURCHASE BY JUDGMENT CREDITOR. Where the judgment creditor is the purchaser at execution sale, it does not follow that he need not pay any money—the officer may require payment when fees are due, or to become due to him, and in default of payment may resell. *Sweeney v. Hawthorne*, 6 Nev. 129.

PURCHASE WITHOUT PAY BY JUDGMENT CREDITOR AT EXECUTION SALE. When a judgment creditor, to whom property is struck off at execution sale, refuses to consummate his purchase, there should be a resale under the provisions of Sections 226 and 227 of the Practice Act, the same as in the case of any other purchaser. *Id.*

Liability of Officer.

J. C.

3323. SEC. 228. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Certificate of Sale to Be Given When Desired.

J. C.

3324. SEC. 229. When the purchaser of any personal property capable of manual delivery shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Certificate to Convey Right, Title and Interest.

J. C.

3325. SEC. 230. When the purchaser of any personal property not capable of manual delivery shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

SALES UNDER ERRONEOUS JUDGMENT SET ASIDE. *Hastings v. B. M. Co.*, 2 Nev. 100.

Real Estate Subject to Redemption—Certificate of Sale to State, What.

J. C.

3326. SEC. 231. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto; and when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption, as provided in this chapter. The officer shall give to the purchaser a certificate of the sale containing: First—A particular description of the real property sold. Second—The price bid for each distinct lot or parcel. Third—The whole price paid. Fourth—When subject to redemption it shall be so stated; and when the judgment, under which the sale has been made, is made payable in a specified kind of money or currency, the certificate shall also state the kind of money or currency in which said redemption may be made, which shall be the same as that specified in the judgment. A duplicate of such certificate shall be filed by the officer in the office of the County Recorder of the county.

Who May Redeem Property.

J. C.

3327. SEC. 232. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter proved by the following persons, or their successors in interest: First—The judg-

ment debtor, or his successor in interest, in the whole or any part of the property. Second—A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

Time and Conditions of Redemption.

J. C.

3328. SEC. 233. The judgment debtor or a redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, in the kind of money or currency specified in the judgment, if any be specified, with eighteen per cent thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner other than the judgment under which the purchase was made, the amount of such lien, with interest.

Subsequent Redemptions, Conditions of—Sheriff's Deed—Who Entitled.

J. C.

3329. SEC. 234. If the property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and, in addition, the amount of any liens, held by said last redemptioner prior to his own, with interest; *provided*, that the judgment under which the property was sold need not be paid as a lien. The property may be again, and as often as the debtor or a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the Sheriff. If no redemption be made within six months after the sale, the purchaser or his assignee shall be entitled to a conveyance, or if the property be so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption shall have expired, the last redemptioner or his assignee shall be entitled to the Sheriff's deed. If the debtor redeem at any time before the redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

1. **REDEMPTIONER, RIGHTS OF.** *Gilson v. Boston*, 11 Nev. 413.

2. **RECITALS IN DEED CANNOT BE CONTRADICTED.** One who brings an action to recover real estate purchased under execution cannot show that the execution issued under a different judgment than the one recited on its face, nor can he contradict the recitals in the deed under which he claims. *Zabriskie v. Mead*, 2 Nev. 285.

If a defendant in execution has no title to premises in question, either at the date of sale, or at any time subsequent to the period when the judgment was rendered, as appears by the recitals in the execution, in the advertisement of sale, in the certificate of sale, and the Sheriff's deed, a party claiming under such execution sale will not be allowed to show that the true date of the judgment under which the execution was issued was different from all those recitals. *Id.*

Payment of Redemption Money.

J. C.

3330. SEC. 235. The payment mentioned in the two last sections may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale; and a tender of the money shall be equivalent to payment so far as to effect a redemption of the property, and all such payments or tender shall be made in the kind of money or currency in which the last redemption was made, and in which the lien of such redemption was payable. A per-

son desiring to redeem may demand of the purchaser, or last redemptioner, or his attorney in fact, if he be absent from the county in which the property is situated, a statement in writing of all his claims and liens against the property to be paid on redemption, specifying each item; and if he fail to furnish said statement within three days, then it shall only be necessary to a redemption to pay or tender the amount of the bid or the last redemption, as the case may be, with the percentage allowed added thereto.

What Redemptioner Must Show.

J. C.

3331. SEC. 236. A redemptioner shall produce to the officer or person from whom he seeks to redeem, and serve with his notice to the Sheriff: First, a copy of the docket of the judgment under which he claims the right to redeem, certified by the Clerk of the Court, or of the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the Recorder; second, a copy of an assignment necessary to establish his claim, verified by the affidavit of himself or of subscribing witnesses thereto; and, third, an affidavit by himself, or his agent, showing the amount then actually due on the lien.

Waste Restrained.

3332. SEC. 237. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, or may appoint a receiver to take charge of the property, or the proceeds thereof, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

Rents and Profits, How Disposed Of.

J. C.

3333. SEC. 238. The purchaser from the time of a sale until a redemption, and a redemptioner from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof; *provided*, that in case the property shall be redeemed as provided in this chapter, the amount of such rents and profits which may have been received by such purchaser or redemptioner, or which said purchaser or redemptioner may have been entitled to claim or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which said purchaser or redemptioner would be entitled to receive on such redemption.

Sections 238 to 247, inclusive, are made applicable to justices' courts by Section 560 of this Act.

Purchaser May Recover from Judgment Creditor, When.

J. C.

3334. SEC. 239. If the purchaser of real property sold on execution, or his successor in interest, or a redemptioner be evicted therefrom in consequence of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at Sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore, and when so revived, the said judgment shall have the same effect as an original judgment of the said

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Subsequent Redemptions, Conditions of—Sheriff's Deed—Who Entitled.

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court of that date, and bearing interest as aforesaid, and any other or after acquired property, rents, issues, or profits of the said debtor shall be liable to levy and sale, under execution in satisfaction of such debt; *provided*, that no property of such debtor bona fide sold upon the filing of such petition, shall be subject to the lien of such judgment; *and, provided further*, that notice of the filing of such petition shall be made by filing a notice thereof in the office of the Recorder of the county where such property is situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

CHAPTER 2—PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

Judgment Debtor Must Appear and Answer, When.

J. C.

3335. SEC. 240. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the Sheriff of the county where he resides, or if he do not reside in this state, to the Sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the Judge of the Court requiring such judgment debtor to appear and answer upon oath concerning his property, before such Judge or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a Judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this chapter.

Refusal to Apply Property to Judgment.

J. C.

3336. SEC. 241. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or of the Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court, or Judge, may by an order require the judgment debtor to appear at a specified time and place before such Judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the Judge may, upon affidavit of the judgment creditor, his agent, or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge, or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Judgment Debtor May Pay.

J. C.

3337. SEC. 242. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the Sheriff's receipt shall be a sufficient discharge for the amount so paid.

Debtor to Appear and Answer.

J. C.

3338. SEC. 243. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a speci-

fed time and place before him, or a referee appointed by him, and answer concerning the same.

The words "in an amount exceeding fifty dollars," are to be deemed omitted in justices' courts. Section 560 of this Act.

Witnesses May Be Compelled.

J. C.

3339. SEC. 244. Witnesses may be required to appear and testify before the Judge, or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Property in Hands of Debtor May Be Ordered Applied on Judgment.

3340. SEC. 245. The Judge or referee may order any property of the judgment debtor not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment, except that the earnings of the debtor not exceeding fifty dollars for his personal services for the calendar month during, or immediately preceding, that in which process has been issued shall not be so applied when it shall be made to satisfactorily appear by the affidavit of the debtor, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor; *provided*, that when it shall satisfactorily appear by affidavit, or otherwise, that the judgment debtor, or his assignee, has received payment, or payments, on account of such personal earnings during such calendar month then only the difference between the amount of such payment, or payments, and fifty dollars shall be exempt from execution. *As amended, Stats. 1881, 121; 1883, 14; 1895, 88; 1897, 22.*

Adverse Claim to Judgment Debtor.

J. C.

3341. SEC. 246. If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt; and the court or Judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Penalty for Disobeying Order.

J. C.

3342. SEC. 247. If any person, party, or witness disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or Judge ordering the reference, for a contempt.

1. PROCEEDINGS SUPPLEMENTARY TO EXECUTION—STATUTES CONSTRUED. Only property to which the debtor's title is clear and undisputed can be ordered applied to the satisfaction of the judgment. *Hagerman v. Tong Lee*, 12 Nev. 331.

DEBT DENIED. If the debt is denied, the only course for the plaintiff is to apply for an order forbidding any transfer or other disposition of the debt, and for an order authorizing the commencement of an action in the proper court for the recovery of the debt as provided in Section 246. *Id.*

2. GARNISHMENT—RIGHT OF ACTION THEREON—NOT A LIEN. Notice of garnishment served upon a debtor, while giving a right of action against him for money owing to the defendant in the garnishment proceedings, does not constitute a lien upon money with which he may subsequently pay his debts, so as to enable the garnisher to follow the money into the hands of third persons to whom it has been paid. *Hulley v. Chedie*, 22 Nev. 127.

TITLE VIII.

Actions in Particular Cases.

CHAPTER 1—ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

Judgment Rendered for Amount Due—Sale Ordered—Execution Issued.

3343. SEC. 248. There shall be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage or lien upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In such action, judgment shall be rendered for the amount found due the plaintiff, and the court shall have power, by its decree or judgment, to direct a sale of the incumbered property (or such part thereof as be necessary), and the application of the proceeds of the sale to the payment of the costs and expenses of the sale, the costs of the suit, and the amount due to the plaintiff. If it shall appear from the Sheriff's return that there is a deficiency of such proceeds and a balance still due to the plaintiff, the judgment shall then be docketed for such balance against the defendant or defendants personally liable for the debt, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may thereupon be issued by the Clerk of the Court, in like manner and form as upon other judgments, to collect such balance or deficiency from the property of the judgment debtor.

1. **CONSTRUCTION.** The section of the Practice Act which declares there shall be but one form of action to foreclose a mortgage does not deprive a mortgagee of his right to sell without action. *Bryant v. Carson River Lumbering Co.*, 3 Nev. 313.

MORTGAGE OF PERSONAL PROPERTY. Title passes to mortgagee, subject to defeasance upon payment of the debt, and after breach of condition he has the absolute right, after due notice, to sell the property at public or private sale. *Id.*

The purchaser of personalty sold by a mortgagee gets a perfect and indefeasible title. There is no right of redemption from such purchaser. That right only exists for a reasonable time after breach as against the mortgagee, who has not sold the property. *Id.*

The fact that the purchaser knows that his vendor is only a mortgagee makes no difference as to the character of title acquired by the purchase. *Id.*

2. **COMMON LAW JUDGMENT IN FORECLOSURE ACTION.** In a suit to foreclose a mortgage there may be a good common law judgment for the debt, which cannot be enforced until the equitable remedy against the mortgaged property is exhausted. *Weil v. Howard*, 4 Nev. 384.

EXECUTION FOR DEFICIENCY IN FORECLOSURE ACTION. *Id.*

LIEN OF FORECLOSURE JUDGMENT. *Id.*

PREMATURE ENTRIES IN JUDGMENT DOCKET. *Id.*

3. **FORECLOSURE OF MORTGAGE.** Stipulation as to amount of judgment does not preclude the court from entering the necessary decree to enforce the payment by sale of mortgaged property. *Nosler v. Haynes*, 2 Nev. 56.

4. **RECEIVERS WILL BE APPOINTED** where it is necessary to prevent fraud, injustice or loss of security. *Hyman v. Kelly*, 1 Nev. 179.

5. **PRIORITY OF MORTGAGE FOR PURCHASE MONEY.** Mortgage for purchase money to be satisfied before mechanic's lien. *Virgin v. Brubaker*, 4 Nev. 31.

6. **MORTGAGE TO SECURE PURCHASE MONEY NOT A VENDOR'S LIEN.** A suit to foreclose a mortgage given to secure the purchase money of land, is not a suit for the enforcement of a vendor's lien. *Hopper v. Parkinson*, 5 Nev. 233.

7. **LIEN CLAIMANTS—DECREE.** In suit for foreclosure of mortgage, where lien claimants are made parties to the suit, the court should determine in its decree relative rights of plaintiff and the several lien claimants. *Johnson v. Badger M. & M. Co.*, 13 Nev. 331.

8. **PERCENTAGE FOR COLLECTING MORTGAGE** may be allowed when instrument provides for such allowance, but need not be the full amount mentioned in the mortgage. *McLane v. Abrams*, 2 Nev. 199; *Cox v. Smith*, 1 Nev. 161.

See *Rickards v. Hutchinson*, 18 Nev. 215.

9. MORTGAGE—UNITED STATES HOMESTEAD ACT—EXEMPTION UNDER. U. S. Revised Statutes, Sec. 2296, providing that no lands acquired under the Homestead Act "shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of a patent therefor," does not render invalid a voluntary incumbrance by mortgage, placed on said homestead prior to the issuance of a patent therefor. *Orr v. Ulyatt*, 23 Nev. 134.

10. MORTGAGEE FOR PREEXISTENT DEBT WHEN REGARDED AS BONA FIDE PURCHASER FOR VALUE. Where Howard was indebted to Fair, and executed to him a note for the debt, and a mortgage on certain real estate to secure the same: *Held*, that Fair, as to the land and mortgage, occupied the position of a bona fide purchaser for value, and that his right would prevail as against the equity of Armstrong, for whom Howard held half the land in trust, the declaration of which trust was, however, not put on record until after the mortgage. *Fair v. Howard*, 6 Nev. 304.

POSSESSION OF LAND AS NOTICE OF TRUST IN IT—ESTOPPEL. *Id.*

Surplus Paid Over.

3344. SEC. 249. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Sale to Satisfy Debt Due Only.

3345. SEC. 250. If the debt for which the mortgage, lien or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER 2—ACTIONS FOR NUISANCE, WASTE, AND WILLFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

Nuisance Defined.

3346. SEC. 251. Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Action for Waste.

3347. SEC. 252. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Injuring Timber, etc.

3348. SEC. 253. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

Just Value Only Recoverable.

3349. SEC. 254. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it.

Unlawful Entry, Damage For.

3350. SEC. 255. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any uncultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

**CHAPTER 3—ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY,
AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.**

Real Property.

3351. SEC. 256. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

1. **LEGAL TITLE NECESSARY.** Before a court of equity will interfere to remove a cloud, they must be satisfied that the party seeking relief has the legal title. If the possession is held adversely, the court may properly refuse to act until the complainant has established his legal title by an action at law. *Low v. Staples*, 2 Nev. 209.

2. **PRACTICE ACT, SECTION 256.** The possession of real property is the base upon which an action to quiet title under Section 256 of the Practice Act is founded; but it cannot be said that an admission or proof of the mere fact, which gives the right of action, establishes prima facie the cause of action. *Blasdel v. Williams*, 9 Nev. 161.

PRIMA FACIE CASE FOR PLAINTIFF.—Burden of Proof—Plaintiff Must Show Adverse Claim. *Id.*

3. **ACTION TO QUIET TITLE—PRACTICE ACT, SECTION 256—POSSESSION, HOW ACQUIRED.** *Held*, that the statute gives the right of action to any person in possession irrespective of the mode by which possession has been acquired. *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370.

PLEADINGS—BURDEN OF PROOF. In such actions it is not necessary for the plaintiff to set out specifically the character of the adverse claim of defendant: the burden of proof is upon the defendant, if he admits plaintiff's possession, or does not disclaim, to plead and prove a good title in himself. (*Blasdel v. Williams*, 9 Nev. 161, overruled.) *Id.*

4. **EJECTMENT UNKNOWN.** The action of ejectment is unknown to our system. *Alford v. Dewin*, 1 Nev. 207.

TENANTS IN COMMON may maintain a joint action for possession of real estate under our system. Where parties having a joint right of action bring suit, and pending the litigation sever their interests, the suit will not abate. *Id.*

Costs Not Recoverable, When.

3352. SEC. 257. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Right Terminated During Action.

3353. SEC. 258. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Improvements Allowed as Set-Off.

3354. SEC. 259. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

May Allow Survey.

3355. SEC. 260. The court in which an action is pending for the recovery of real property may, on motion, upon notice by either party, for good cause shown, grant an order allowing such party the right to enter upon the property and make survey and measurement thereof, for the purposes of the action.

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them have an estate of inheritance or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

1. NOT ENTITLED TO PARTITION. Party not entitled to enjoy present rents or possession. *Conter v. Herschel*, 24 Nev.
2. WHO CAN APPLY FOR RELIEF. It is immaterial when a party in possession files his bill claiming that he is a tenant in common with others, asking for a division of the land, etc., whether he shows that he has a legal title in common with the defendants, or only has an equitable title to the one-half of the land described. In either case he is entitled to substantially the same relief. *Crosier v. McLaughlin*, 1 Nev. 348.
3. ACCOUNTING. The court will not only proceed to divide the land, but will, in a proper case, direct an accounting, and do equity in the case by making parties account for rents, etc. *Dall v. Confidence Co.*, 3 Nev. 531.

SALE ONLY WHERE PARTITION INJURIOUS. When a bill is filed for a partition of realty, the court should not decree a sale except in those cases where a partition would manifestly be injurious to the interests of the cotenants. *Id.*

To Be Set Forth in Complaint.

3362. SEC. 267. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Lien, When Not Matter of Record.

3363. SEC. 268. No persons who have or claim any liens upon the property, by mortgage, judgment, or otherwise, need be made parties to the action, unless such liens be matters of record.

Notice of Action.

3364. SEC. 269. Immediately after filing the complaint, the plaintiff shall file with the Recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Summons, to Whom Directed.

3365. SEC. 270. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise upon the property, or upon any particular portion thereof; and generally to all persons unknown who have or claim any interest in the property.

Summons by Publication.

3366. SEC. 271. If a party having a share or interest is unknown, or any one of the known parties reside out of the state, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons as published shall be accompanied by a brief description of the property which is the subject of the action.

Answer, What to Set Forth.

3367. SEC. 272. The defendants who have been personally served with the summons and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment,

or otherwise, they shall state the amount and date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security; or they shall be deemed to have waived their rights to such lien.

All Rights May Be Determined.

3368. SEC. 273. The rights of the several parties, plaintiffs as well as defendants, may be put to issue, tried, and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Certificate of Recorder as to Liens.

3369. SEC. 274. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the Recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at the time of the commencement of the action.

Lien Claimants Made Parties.

3370. SEC. 275. If it shall appear to the court, by the certificate of the County Recorder or County Clerk, or by the sworn or verified statement of any person who may have examined or searched the records that there are outstanding liens or incumbrances of record upon such real property, or any part thereof, which existed and were of record at the time of the commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Notice to Lien Holders.

3371. SEC. 276. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof, by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication of notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

Sale of Property.

3372. SEC. 277. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and shall designate

them have an estate of inheritance or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

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the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

PARTITION OF LANDS, HOW MADE. The district court can order a partition to be made, but cannot itself make the partition except in the indirect mode of confirming the report of the referees appointed for the purpose of carrying out the order of partition. *Dondero v. Van Sickle*, 11 Nev. 389.

IDEM. When the court decides in favor of a partition being made, it should appoint referees and direct them to divide and mark out the land, including the improvements into parcels of equal *value*, instead of making the divisions into parcels of equal *area*. *Id.*

SEVERANCE OF IMPROVEMENTS NOT AUTHORIZED—Personal Property—Partition Erroneous. *Id.*

Partition, How Made.

3373. SEC. 278. In making the partition, the referee shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

Report of Referees.

3374. SEC. 279. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Judgment, Effect Of.

3375. SEC. 280. The court may confirm or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive: First—On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years, or for life. Second—On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and, Third—On all other persons claiming from such parties or persons, or either of them.

Tenants Not Affected.

3376. SEC. 281. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

Expenses of Referees.

3377. SEC. 282. The expenses of the referees, including those of a surveyor and his assistant, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

Lien on Individual Interest.

3378. SEC. 283. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

For Life or Years.

3379. SEC. 284. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds of Sale of Incumbered Property, How Applied.

3380. SEC. 285. The proceeds of the sale of the incumbered property shall be applied, under the direction of the court, as follows: First—To pay its just proportion of the general costs of the action. Second—To pay the costs of the reference. Third—To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment. Fourth—The residue among the owners of the property sold, according to their respective shares therein.

Lien Claimant Holding Other Securities.

3381. SEC. 286. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Proceeds, How Distributed.

3382. SEC. 287. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

Conflicting Claims.

3383. SEC. 288. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

Sales, How Made.

3384. SEC. 289. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Court May Direct Terms of Credit, etc.

3385. SEC. 290. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the state.

Mortgages May Be Taken.

3386. SEC. 291. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner, and for the shares of an infant, in the name of the guardian of such infant, and for other shares, in the name of the Clerk of the county and his successors in office.

Satisfaction for Leasehold Estate.

3387. SEC. 292. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the Clerk of the Court. Upon the filing of such consent, the Clerk shall enter the same in the minutes of the court.

Court to Determine Amount of Satisfaction.

3388. SEC. 293. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in court for him, as the case may require.

Lessee Unknown.

3389. SEC. 294. If the person entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Future Right to Be Preserved.

3390. SEC. 295. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms and Manner of Sale.

3391. SEC. 296. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Referee Not to Be Interested.

3392. SEC. 297. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Report of Sale.

3393. SEC. 298. After completing a sale of the property, or any part thereof ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any taken. The report shall be filed in the office of the Clerk of the county where the property is situated.

Conveyance.

3394. SEC. 299. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

When Purchaser Entitled to Share of Proceeds.

3395. SEC. 300. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyance Recorded.

3396. SEC. 301. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown if the summons have been served by publication, and against all persons claiming from them or either of them.

Proceeds Belonging to Unknown Owners.

3397. SEC. 302. When there are proceeds of a sale belonging to an unknown

owner, or to a person without the state, who has no legal representative within it, the same shall be vested in securities or interest for the benefit of the persons entitled thereto.

Security to Be in Name of Clerk.

3398. SEC. 303. When the security of the proceeds of the sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the Clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Security to Be Delivered to Whom.

3399. SEC. 304. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of, and payable to, the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the Clerk.

Security in Name of Clerk.

3400. SEC. 305. The Clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the Clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Compensation to Equalize.

3401. SEC. 306. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interest of some of them, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition. But such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interests will be promoted thereby.

Share of Infant Paid to Guardian.

3402. SEC. 307. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

Share of Insane Persons to Be Received by Guardian.

3403. SEC. 308. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referee, on executing with sufficient sureties an undertaking approved by a Judge of the court, that he will faithfully discharge the trust imposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Consented to by Guardian.

3404. SEC. 309. The general guardian of an infant and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real

estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

Costs of Partition.

3405. SEC. 310. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case there shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Single Referee.

3406. SEC. 311. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

Mining Claim.

3407. SEC. 312. When the action is for partition of a mining claim among the tenants in common, joint tenants, coparceners or partners thereof, the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in manner as hereinbefore provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner herein-after specified.

SALE OF MINING CLAIM INJURIOUS. Under our statute, if any one or more of the cotenants files an affidavit showing that a sale of an entire mining claim would be injurious to him or them, the court must proceed to divide the claim as prescribed by statute. A sworn answer setting up the same matter is equivalent to the affidavit required by the statute. *Dall v. Confidence Co.*, 3 Nev. 531.

Order of Court.

3408. SEC. 313. The court shall, in its order, or by a subsequent order made upon motion, fix the time for division of the claim by the referees, which shall not be less than twenty nor more than forty days from the day of making the order, except by consent of all the parties in interest who have appeared in the action.

To Go on Claim.

3409. SEC. 314. On the day designated in the order, the referees shall go upon the claim to be divided, and proceed to make division of the same as hereinafter provided, and shall continue from day to day until the whole business is completed.

Parties May Unite.

3410. SEC. 315. Two or more of the tenants in common, joint tenants, copartners or parceners, may unite together for the purposes of such division, of which they shall give the referees written notice before they commence the business of division; and all who do not unite as aforesaid, or give notice of separate action, shall, for the purposes of division, be deemed and held to have united. The referees in their action shall recognize those named in the order of the court, or their agents and attorneys in fact, duly appointed by instrument in writing under seal, and acknowledged as in cases of conveyances of real estate, the guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person or other person adjudged incapable of

conducting his own affairs, and as to the interest of each, shall be controlled entirely by the order of the court.

Portions Sold at Auction.

3411. SEC. 316. At the time and place of division, one of the referees to be selected by them shall, in the manner of public auction, offer to the party or parties who will take the least part or portion of said mining claim in proportion to the interest he or they may have therein, the privilege of first selecting the place at which his portion shall be located, and upon closing the bids the referees shall proceed to measure and mark off, by distinct metes and bounds, to the lowest bidder, his or their portion of said mining claim, at the place designated by them or him, according to the terms of his or their bid.

Next Lowest Bidder.

3412. SEC. 317. When the referees have marked off and set apart the interest of the lowest bidder, as provided in the last section, they shall offer to the remaining parties the privilege of selection as in said section mentioned and described, and shall, upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder, and shall thereafter continue in the same manner to receive bids and mark off the interest of the bidder or bidders until there shall remain but one party in interest, or parties united, forming one interest, as provided in section three hundred and fifteen.

Parties Remaining.

3413. SEC. 318. The party or parties remaining as provided in the last section, shall become the owner or owners, as the case may be, of the entire claim not marked off and set apart to other parties as hereinbefore provided, in proportion to their respective interests in the claim.

Report of Referee.

3414. SEC. 319. The referees shall return with their report in this Act required to be made by them, the evidences of authority presented to them by persons other than the parties mentioned in the order of the court by which they claim the right to bid, or otherwise act, during the proceedings hereinbefore mentioned.

CHAPTER 5—ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Usurpation of Office.

3415. SEC. 320. An action may be brought by the Attorney-General, in the name of the people of this state, upon his own information, or on the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state. And it shall be the duty of the Attorney-General to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into; or unlawfully held or exercised by any person, or when he is directed so to do by the Governor.

Complaint.

3416. SEC. 321. Whenever such action is brought, the Attorney-General, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a Judge of the Supreme Court or a District Judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

Judgment.

3417. SEC. 322. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice shall require.

May Take Office.

3418. SEC. 323. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages.

3419. SEC. 324. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

One Action May Be Brought Against Several.

3420. SEC. 325. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Judgment Against Defendant.

3421. SEC. 326. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may, also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the state.

See Quo Warranto, Sec. 3783, *et seq.* *McMillan v. Sadler*, 25 Nev.

TITLE IX.*Of Appeals in Civil Actions.***CHAPTER 1—APPEALS IN GENERAL.****How Reviewed.**

3422. SEC. 327. A judgment or order in a civil action, except when expressly made final by this Act, may be reviewed as prescribed by this title, and not otherwise.

See, also, Secs. 3857-3861, and Sec. 3864.

1. STATUTE MUST BE FOLLOWED. *Marx v. Lewis*, 24 Nev.

2. ELECTION CONTEST—NEW TRIALS AND APPEALS. New trials and appeals in contested election cases are regulated by the Civil Practice Act. *Lynip v. Buckner*, 22 Nev. 426.

3. APPEAL DISMISSED BY APPELLATE COURT—When. *Union Ditch Co. v. Leete*, 24 Nev.

Order May Be Vacated.

3423. SEC. 328. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the Judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Appellant and Respondent.

3424. SEC. 329. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

From What Appeal May Be Taken.

3425. SEC. 330. An appeal may be taken: First—From a final judgment in an action, or special proceedings commenced in the court in which the judgment

is rendered, within one year after the rendition of judgment. Second—From a judgment rendered on an appeal from an inferior court, within ninety days after the rendition of the judgment. Third—From an order granting or refusing a new trial, from an order granting or dissolving an injunction, and from an order refusing to grant or dissolve an injunction, from an order dissolving or refusing to dissolve an attachment, and from any special order made after the final judgment, within sixty days after the order is made and entered in the minutes of the court. Fourth—From an interlocutory judgment or order in cases of partition which determines the right of the several parties, and directs partition sale, or division to be made, within sixty days after the rendition of the same. *As amended, Stats. 1887, 92.*

1. **APPEAL TAKEN BEFORE FINAL JUDGMENT RENDERED WILL BE DISMISSED.** *Elko-Tuscora M. Co. v. Wines, 24 Nev.*
 2. **APPEAL DISMISSED WHEN NOT TAKEN IN TIME.** If an appeal from the judgment be not taken within one year it will be dismissed. *Solomon v. Fuller, 13 Nev. 276.*
 3. **APPEAL FROM ORDERS AFTER FINAL JUDGMENT.** An appeal from a special order made after final judgment must be taken within sixty days after the order is made. *Weinrich v. Porteous, 12 Nev. 102.*
 4. **TIME.** Where the notice of appeal is filed one day before the expiration of the time limited for taking an appeal, but the undertaking is not filed until three days after the expiration of that time, but within five days after the filing of the notice of appeal: *Held*, that the appeal was taken within the year allowed by statute. *Peran v. Monroe, 1 Nev. 484.*
 5. **APPEAL—TIME OF TAKING.** If an appeal lies from an order refusing to open a default, under the provisions of Section 330 of the Civil Practice Act, it must be taken within sixty days or the right of appeal therefrom is lost. *Reinhart v. Co. D, 23 Nev. 369.*
 6. **APPEAL—WHEN IT MAY BE TAKEN.** Section 330 of the Civil Practice Act authorizes an appeal to be taken from a final judgment in an action or special proceeding. *Kehoe v. Blethen, 10 Nev. 446.*
- JUDGMENT—WHEN FINAL.** A judgment, when pronounced by the court, is as final as when it is entered and recorded by the Clerk, as required by statute.
- See Judgment in General, Title VI.
7. **APPEAL FROM ORDER REFUSING TO SET ASIDE JUDGMENT.** The propriety of an order refusing to set aside a judgment cannot be considered, if such order be not appealed from within the time prescribed by the statute. *Winter v. Winter, 8 Nev. 129.*
 8. **PRACTICE—ORDER CHANGING VENUE NOT APPEALABLE.** An order changing the place of trial is not appealable, but is properly brought before the court on an appeal from the judgment as an intermediate order involving the merits and necessarily affecting the judgment. *State v. Shaw, 21 Nev. 222.*

Appeal, How Made.

3426. SEC. 331. The appeal shall be made by filing with the Clerk of the Court with whom the judgment or order appealed from is entered, a notice, stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

When defendant resides out of state, see Sec. 3861; see, also, Sec. 3859.

1. **HOW TAKEN.** In order to take and perfect an appeal, the appellant should first file his notice of appeal, next serve it, and, within five days of the filing of the notice, file an undertaking on appeal. *Reese M. Co. v. Rye Patch M. Co., 15 Nev. 341; State v. Alta M. Co., 24 Nev.; Spafford v. White River L. & L. Co., 24 Nev.*
2. **NOTICE OF APPEAL.** The notice should state that appellants do appeal, not that they will appeal. *Simpson v. Ogg, 18 Nev. 28.*
3. **NOTICE OF APPEAL—CANNOT BE WAIVED.** *Marx v. Lewis, 24 Nev.*
4. **NOTICE OF APPEAL** given orally to respondents, even if given in open court and entered on the minutes of the court, is not sufficient to make an appeal and dispense with the filing of a written notice. *Lambert v. Moore, 1 Nev. 344.*

The filing and serving of a written notice of appeal must be followed by the filing of a proper undertaking, or the deposit in lieu thereof, within five days, or the notice becomes inoperative and a nullity. *Id.*

5. **ADVERSE PARTY—Service Upon.** *Bliss v. Grayson, 24 Nev.*

6. NOTICE OF APPEAL MUST BE FILED BEFORE COPY SERVED. To render an appeal effectual the filing of the notice of appeal must precede or be contemporaneous with the service of the copy; otherwise that which purports to be a copy fails as such for want of an original to support it. *Lyon Co. v. Washoe Co.*, 8 Nev. 177; *Brooks v. Nev. Nickel Syndicate*, 24 Nev.; *Nat. Nickel Co. v. Nev. Nickel Syndicate*, 24 Nev.; *Spafford v. White River L. & L. Co.*, 24 Nev.
7. NOTICE OF APPEAL AND UNDERTAKING ON APPEAL—WHEN MUST BE FILED. In construing Sections 331 and 348 of the Civil Practice Act: *Held*, that a copy of the notice of appeal, as filed, must be served before or at the time of filing the undertaking on appeal. *Johnson v. Badger M. & M. Co.*, 12 Nev. 261.
8. SERVICE OF NOTICE OF APPEAL. Where a copy of the notice of appeal was served on the attorneys for defendant at a certain time and place by "exhibiting to them personally the said copy and by leaving the same in a conspicuous place in their office": *Held*, a substantial compliance with the statute. *Clark v. Strouse*, 11 Nev. 76.
9. NOTICE OF APPEAL—Sufficient, When. *Bliss v. Grayson*, 24 Nev.
10. NOTICE OF APPEAL. Where the notice of appeal properly describes the judgment from which the appeal is taken, the addition of other words indicating that the appeal is taken from the order dismissing the action, on which order the judgment is founded, should be treated as surplusage, and they do not invalidate the appeal. *Nev. Cent. R. Co. v. Dist. Court*, 21 Nev. 410.

Statement on Appeal.

3427. SEC. 332. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and no more, and shall file the same with the Clerk, and serve a copy thereof upon the adverse party. The respondent may, within five days thereafter, prepare and file amendments to the statement, and shall serve a copy thereof on the appellant; the statement and amendments shall be presented to the Judge or referee who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such Judge or referee. If no amendments are filed, the statement may be presented to the Judge or referee for settlement, without any notice to the respondent.

See Secs. 3860 and 3864.

1. STATEMENT NOT INDISPENSABLE. This court has never held it indispensable that a statement should be made in the court below of the grounds relied on upon appeal. *Gillig v. Lake Bigler Road Co.*, 2 Nev. 214.
2. STATEMENT NOT NECESSARY. In appeals from orders granting or refusing a new trial, a statement on appeal is not necessary. *Gregory v. Frothingham*, 1 Nev. 253; *Johnson v. Wells, Fargo & Co.*, 6 Nev. 224; *Bryant v. Carson River L. Co.*, 3 Nev. 313.
This court, without such statement, will consider "the statement on motion for new trial the pleadings, depositions, documentary evidence on file, and minutes of the court." *Id.*
3. STATEMENT. When there is a statement on motion for a new trial, there need be none on appeal. *O'Neale v. Cleveland*, 3 Nev. 486.
4. IN ABSENCE OF STATEMENT, OR BILL OF EXCEPTIONS, JUDGMENT ROLL ONLY CONSIDERED. *Peers v. Reed*, 23 Nev. 404.
5. STATEMENT. When there is a statement on appeal from the judgment, and subsequently a statement on appeal from an order overruling a motion for a new trial, each statement must be considered separately, and portions of one cannot be taken to aid the other. *Whitmore v. Shiverick*, 3 Nev. 288.
It would be error to grant a new trial where there is no affidavit and no statement in support of the motion for that object. *Id.*
A statement on appeal must be made within twenty days after judgment, and if a sufficient statement be not made within that time, it cannot be subsequently made. *Id.*
6. ASSIGNMENT OF ERRORS IN STATEMENT ON APPEAL. A statement on appeal must contain a specific statement of the particular errors or grounds relied on. *Corbett v. Joh.* 5 Nev. 201; *Meadow Valley M. Co. v. Dodds*, 6 Nev. 261; *Gillig v. Lake Bigler R. Co.*, 2 Nev. 214; *Earles v. Gilham*, 20 Nev. 49.

See *Hoopes v. Meyer*, 1 Nev. 433.

7. **PRESUMPTION IN FAVOR OF REGULARITY OF PROCEEDINGS.** Error complained of must affirmatively appear. *Champion v. Sessions*, 2 Nev. 271; *Lady Bryan G. & S. M. Co. v. Lady Bryan M. Co.*, 4 Nev. 414; *Roney v. Buckland*, 5 Nev. 219; *Sherman v. Shaw*, 9 Nev. 148; *Boynton v. Longley*, 19 Nev. 69.
8. **ORAL EVIDENCE NOT ADMISSIBLE** to show error in proceedings of lower court. *Ex Parte Smith*, 2 Nev. 338.
9. **STATEMENT—Jurisdiction of Court to Settle Exceptions Taken, etc., Discussed.** *Lobdell v. Hall*, 3 Nev. 507; *Hoppin v. Cheney*, 24 Nev.
10. **STATEMENT—Motion to Strike Out Must Be Made in Court Below.** *Beck v. Thompson*, 22 Nev. 109.
- FINDINGS NOT IN STATEMENT STRICKEN OUT.** Findings not included in the statement on motion for new trial will, upon motion, be stricken from the record on appeal. The fact that they are identified by the Judge of the District Court as having been used upon the hearing of the motion, does not alter this rule. *Id.*
11. **STATEMENT—Must Comply With Statutory Requirements, or Cannot Be Considered.** *Barnes v. Meyer*, 16 Nev. 91.
12. **STATEMENT ON MOTION FOR NEW TRIAL—WHEN NOT A STATEMENT ON APPEAL.** In construing the provisions of the Civil Practice Act (Secs. 197, 332, 333, 335-6): *Held*, that when an appeal is only taken from the judgment, a statement that had been prepared and used as a statement on motion for a new trial cannot be considered as a statement on appeal. *Williams v. Rice*, 13 Nev. 234; *Nesbitt v. Chisholm*, 16 Nev. 39; see *Robinson v. Benson*, 19 Nev. 331.
13. **STATEMENT ON NEW TRIAL AND ON APPEAL—Considered Good.** *Elder v. Frevert*, 18 Nev. 278.
14. **APPEAL—STATEMENT—SETTLEMENT OF—APPEAL PERFECTED BEFORE STATEMENT FILED.** A party having the right to appeal, may, within twenty days after the entry of the judgment or order, file his statement upon appeal and have it settled by the Judge, and, within the time limited, jurisdiction of the case for that purpose is retained by the district court, even though the appeal be perfected before such a statement is prepared. *James v. Lepore*, 19 Nev. 174; *Patchen v. Keeley*, 19 Nev. 404. *Contra*, *Thomas v. Sullivan*, 11 Nev. 280; *Lamburth v. Dalton*, 9 Nev. 64.

Waiver of Statement.

3428. SEC. 333. If the party shall omit to make a statement within the time limited, he shall be deemed to have waived his right thereto; and when a statement is made and the parties shall omit within the several times above limited, the one party to propose amendments, the other to notify an appearance before a Judge or referee, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the Judge or referee who tried or heard the case shall, notwithstanding such omission or implied agreement, have power to correct any misstatement of his rulings which such statement may contain.

WAIVER OF WAIVER—Time to Make Statement on Appeal. *Johnson v. W. F. & Co.*, 6 Nev. 224.

Time Enlarged, When.

3429. SEC. 334. The several periods of time above limited may be enlarged, upon good cause shown, by the Judge before whom the cause was tried.

Statement, How Certified and Filed.

3430. SEC. 335. The statement, when settled by the Judge or referee, shall be signed by him, with his certificate that the same has been allowed and is correct. When the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the Clerk.

1. **VERIFICATION OF TRANSCRIPT AND STATEMENT.** A stipulation that "the foregoing transcript on appeal is correct, and shall be the transcript in this case on appeal," signed by the respective counsel, applies to the verification of the transcript under the provisions of Section 340 of the Practice Act, and not to a statement on appeal as required by Section 332. *Irwin v. Samson*, 10 Nev. 282.

2. **AUTHENTICATION OF STATEMENT.** A statement of a case on appeal must be settled and authenticated by the Judge or referee hearing the case, or by agreement of the parties under Secs. 332, 333, and 335, Civil Practice Act; and unless so authenticated thirty days prior to the commencement of a term of the supreme court, the appellant is not in default for failure to file a transcript by the first day of the term, though the statement may have been on file with the Clerk of the trial court for a longer time, and no amendments proposed thereto. *Hayes v. Davis*, 23 Nev. 233.

APPEAL IRREGULARLY DISMISSED. An appeal found to have been irregularly dismissed, will be reinstated upon motion. *Id.*

Statement and Judgment Roll.

3431. SEC. 336. A copy of the statement shall be annexed to a copy of the judgment roll, if the appeal be from the judgment; if the appeal be from an order, to a copy of such order.

APPEAL FROM JUDGMENT MUST CONTAIN JUDGMENT ROLL. Where the appeal is taken from the judgment the statement on appeal must be annexed to the judgment roll, as provided in Section 336 of the Practice Act. *Irwin v. Samson*, 10 Nev. 282.

APPEAL DISMISSED FOR WANT OF STATEMENT. Where there is no statement on appeal no proper assignment of errors, and no judgment roll, the appeal must be dismissed. *Id.*

Appeals on Affidavit.

3432. SEC. 337. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed, but such affidavit shall be annexed to the order, in the place of the statement mentioned in these sections.

What May Be Reviewed on Appeal.

3433. SEC. 338. Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment.

Power of Appellate Court.

3434. SEC. 339. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify, any or all of the proceedings subsequent to or dependent upon such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by erroneous judgment or order, and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

1. **WHO MAY APPEAL—Party of Record.** *Virgin v. Brubaker*, 4 Nev. 31.

IF A JUDGMENT IMPOSES COSTS upon a person, he is entitled to a hearing on an appeal from it. *Id.*

2. **NOT REVERSIBLE.** A court of appellate jurisdiction cannot reverse a judgment produced by the voluntary act of a party. *Paul v. Armstrong*, 1 Nev. 82.

An appeal will not lie from a judgment by default. *Id.*

But see *Kidd v. Four-Twenty M. Co.*, 3 Nev. 381.

3. **WHAT COURT WILL NOT REVIEW.** The cost bill is no part of the judgment roll, and where there is no statement or bill of exceptions we cannot pass on its correctness. On a mere appeal from a judgment we cannot review any error which might occur in refusing to sustain a motion made, after the appeal was perfected, to strike out the cost bill. *Howard v. Richards*, 2 Nev. 128.

Discussed at Length. *Id.*

4. **JURISDICTION OF DISTRICT COURT ON APPEAL FROM JUSTICE FINAL.** The appellate jurisdiction of the district court on appeal from a justice's court is final (Const., Art. VI, Sec. 6, and no appeal lies from its action as such appellate court. *Leonard v. Peacock*, 4 Nev. 157.

See *Dickson v. Corbett*, 10 Nev. 439 (Mechanic's Lien).

5. **ORDER, NOT A COURT PROCEEDING, NOT APPEALABLE.** *Lyon Co. v. Esmeralda Co.*, 18 Nev. 166.

6. **ORDER MADE BY REFEREE NOT APPEALABLE.** *Hamilton v. Kneeland*, 1 Nev. 40.
7. **ORDER REQUIRING BOND OR APPOINTING RECEIVER NOT APPEALABLE.** The statute (Practice Act, Sec. 330) does not allow an appeal from an order requiring a party to give a bond, nor from an order appointing a receiver. *Meadow Valley M. Co. v. Dodds*, 6 Nev. 281.
- Relief on Appeal from Order Appealable Only in Part. *Id.*
8. **NO APPEAL FROM ORDER SUSTAINING A DEMURRER.** An appeal does not lie from the action of a district court in simply sustaining a demurrer; there must be a final judgment in such case before an appeal can be taken. *Keyser v. Taylor*, 4 Nev. 435.
9. **NON-APPELLATE ORDER.** An order refusing to transfer a cause from a state district court to a United States Court is not one of the orders contemplated (by Sec. 285 of the Practice Act of 1861), and no direct appeal lies therefrom. *Combination S. M. Co. v. Curler*, 4 Nev. 445.
10. **FINDINGS—CONCLUSIONS OF LAW.** If the findings of the court are objectionable as only stating conclusions of law the party dissatisfied with them must ask to have them corrected. If he fails to do so he is not in a position to complain on appeal. *Langworthy v. Coleman*, 18 Nev. 440.
11. **NO GROUNDS FOR REVERSAL.** A defective finding of facts is not a ground for reversing a judgment, when that defect is not noticed or complained of in the court below. *McClusky v. Gerhauser*, 2 Nev. 47; *V. & T. R. Co. v. Elliot*, 5 Nev. 358; *Bowker v. Goodwin*, 7 Nev. 135.
12. **NO REVERSAL FOR ERROR WHICH DOES NOT PREJUDICE.** A judgment will not be reversed on account of error in admitting immaterial or incompetent testimony, when it appears that the appellant could not have been prejudiced thereby. *Cahill v. Hirschman*, 6 Nev. 57; *Caples v. C. P. R. Co.*, 6 Nev. 265; *Mitchell v. Bromberger*, 2 Nev. 345; *Beatty v. Sylvester*, 3 Nev. 228; *Todman v. Purdy*, 5 Nev. 238.
13. **NO ERROR, NO REVERSAL.** This court cannot reverse a judgment unless it affirmatively appear that error has been committed. *Nosler v. Haynes*, 2 Nev. 53.
14. **JUDGMENT CORRECT, THOUGH REASON WRONG.** If a judgment be right, though decided upon a wrong ground, it will not be disturbed by the supreme court. *Conley v. Chedic*, 6 Nev. 222.
15. **VOID ORDER.** It is not necessary to appeal from a void order which can have no operation or effect. *Killip v. Empire Mill Co.*, 2 Nev. 34; *Ranft v. Young*, 21 Nev. 401.
16. **RECORD ON APPEAL MUST SHOW ACTION APPEALED FROM.** Where an appeal purported to be from an order overruling a motion for new trial, and the record failed to show that the motion had been disposed of, or acted on: *Held*, that the appeal was premature and should be dismissed. *Kalmes v. Gerrish*, 7 Nev. 31.
17. **APPEAL FROM IMPROPER JUDGMENT OF DISMISSAL—JUSTICES' COURTS.** An appeal will lie from a judgment rendered in a justice's court on an order improperly dismissing the action. Especially is that the case where both issues of law and issues of fact had been made in the justice's court. *Nev. Cent. R. Co. v. Dist. Court*, 21 Nev. 410.
18. **RIGHT OF APPEAL** under our Practice Act does not depend upon the entry or perfection of the judgment of the lower court, but upon the rendition of it. *Cal. State Tel. Co. v. Patterson*, 1 Nev. 150.
19. **CONTEMPT—WHEN APPEAL LIES.** An order adjudging garnishees to be in contempt of court for failing to pay over money, is in the nature of a civil process, and is, under the principles decided in *Phillips v. Welch*, 11 Nev. 190, an appealable order. *Hagerman v. Tong Lee*, 12 Nev. 331.
20. **FORECLOSURE OF MECHANIC'S LIEN.** Where a suit to foreclose a mechanic's lien is brought in a justice's court and appealed to the district court: *Held*, that an appeal lies from the district court to the supreme court. *Dickson v. Corbett*, 10 Nev. 439.
21. **APPEAL—WHAT FROM.** When an erroneous judgment is entered, and there is a motion made in the court below to have that judgment set aside, the appeal lies direct from the judgment, and not from the order refusing to set it aside. *Maples v. Geller*, 1 Nev. 233.
22. **ORDER SETTING ASIDE JUDGMENT APPEALABLE.** The Practice Act allows an appeal from an order setting aside a judgment. *Ballard v. Purcell*, 1 Nev. 342; *Maynard v. Johnson*, 2 Nev. 16.
23. **ORDER MADE BEFORE FINAL JUDGMENT**, not reviewable, except as expressly authorized by statute. *Low v. C. P. M. Co.*, 2 Nev. 75.
24. **JURISDICTION ON APPEAL—Order Retaxing Costs.** *Comstock M. & M. Co. v. Allen*, 21 Nev. 325.

25. **INSUFFICIENCY OF EVIDENCE TO SUSTAIN FINDINGS—APPEAL FROM JUDGMENT—No Motion for New Trial—Equity Cases.** The rule that the supreme court will not review the evidence upon an appeal from the judgment alone, for the purpose of determining its sufficiency to sustain the findings of the lower court, no motion for a new trial having been made, applies to suits in equity where the evidence is entirely documentary, as well as to all other actions. *Burbank v. Rivers*, 20 Nev. 81; *Feusier v. Sneath*, 3 Nev. 131.
26. **WHEN ASSIGNMENT OF ERROR NOT CONSIDERED BY APPELLATE COURT.** If appellant presents no argument or authorities in support of an alleged error in the court below, this court will not consider the assignment unless the error is so unmistakable that it reveals itself by a casual inspection of the record. *Gardner v. Gardner*, 23 Nev. 202.
27. **STIPULATION NOT TO APPEAL, ENFORCED.** *Wheeler v. Floral M. & M. Co.*, 10 Nev. 200.
- APPEAL, WHEN TAKEN FOR DELAY—Damages.** *Id.* *Escere v. Torre*, 14 Nev. 51; *Allen v. Mayberry*, 14 Nev. 151; *Kercheval v. McKenny*, 4 Nev. 294; *Gammans v. Rousell*, 14 Nev. 171.
28. **DAMAGES FOR UNREASONABLE APPEAL.** In cases of appeals from orders refusing to change the place of trial, damages for delay will be imposed, unless reasonable ground for appeal is shown. *Table Mtn. v. Waller's Defeat S. M. Co.*, 4 Nev. 218.
29. **APPEAL MAY BE HAD FROM ORDER REFUSING TO CHANGE VENUE.** *Table Mtn. G. & S. M. Co. v. Waller's Defeat S. M. Co.*, 4 Nev. 218.
30. **ORDER CHANGING VENUE NOT APPEALABLE.** Properly brought before the court on appeal from judgment. *State v. Shaw*, 21 Nev. 222.
31. **VOID JUDGMENT.** This court will reverse not only erroneous judgments, but void judgments. *Hastings v. Burning Moscow Co.*, 2 Nev., 93.
32. **APPELLATE COURT WILL REVERSE JUDGMENT** when complaint will not support judgment, although counsel may not have shown proper grounds. *Van Doren v. Tjader*, 1 Nev. 360.
33. **APPEAL—WHAT TO BE CONSIDERED UPON.** Such errors only as the appellant complains of can be considered upon appeal. *Dennis v. Caughlin*, 22 Nev. 447.
34. **WHAT CONSIDERED ON APPEAL FROM JUDGMENT.** On appeal from a judgment, any error appearing in the judgment roll may be corrected in the appellate court without a statement on appeal. *Klein v. Allenbach*, 6 Nev. 159.
35. **APPEAL FROM ORDER OPENING DEFAULT.** The supreme court will not reverse an order setting aside a default except in an extreme case. *Howe v. Coldren*, 4 Nev. 171.
36. **CONFLICT OF EVIDENCE.** Neither the findings of fact by a Judge, nor the verdict of a jury, will be disturbed on the ground of insufficiency of testimony, in case of a conflict, unless the preponderance of evidence against it be great and decided. *Reed v. Reed*, 4 Nev. 395; *Ophir S. M. Co. v. Carpenter*, 4 Nev. 534; *Roney v. Buckland*, 5 Nev. 219; *Clarke v. Nev. L. & M. Co.*, 6 Nev. 203; *Simpson v. Williams*, 18 Nev. 432; *Buckley v. Buckley*, 12 Nev. 423; *Lewis v. Wilcox*, 6 Nev. 215; *Carlyon v. Lannan*, 4 Nev. 156; *Carson v. Bryant Land Co.*, 3 Nev. 213; *State v. Yellow Jacket S. M. Co.*, 5 Nev. 415; *McCoy v. Bateman*, 3 Nev. 126; *Smith v. Mayberry*, 13 Nev. 427; *Duquette v. Ouilmette*, 13 Nev. 499; *State v. C. P. R. Co.*, 10 Nev. 47; *Langworthy v. Coleman*, 18 Nev. 440; *Solen v. V. & T. R. Co.*, 13 Nev. 106; *Boskowitz v. Davis*, 12 Nev. 446; *Winter v. Fulston*, 20 Nev. 280.
37. **INSUFFICIENCY OF EVIDENCE.** Where a finding for plaintiff, as to the quantity of a water appropriation, was founded upon the basis that the flume was of a certain size, and also of a certain grade, and it appeared on appeal that, though the size of the flume was proved, there was no sufficient proof of its grade: *Held*, on proper objection, that the judgment should be set aside. *Ophir S. M. Co. v. Carpenter*, 6 Nev. 393.
- NEW ISSUES NOT TO BE RAISED IN THE SUPREME COURT.** *Id.*
38. **FINDINGS—CONFLICT OF EVIDENCE AS TO COLLATERAL FACTS.** The rule that the decision of a *nisi prius* court as to the sufficiency of proof will not be disturbed on appeal if there be a conflict of evidence, applies also to collateral facts. *Bowker v. Goodwin*, 7 Nev. 135.
39. **SEPARATE APPEAL FROM JUDGMENT.** Where the homestead right of a married woman, who has been made a party defendant with her husband, in an action to dissolve a copartnership—it being claimed that the homestead was purchased with partnership funds—has been finally determined, she can prosecute her separate appeal, although the decree as entered is not final against her husband. *Rhodes v. Williams*, 12 Nev. 31.
40. **APPEAL FROM PART OF A JUDGMENT—JURISDICTION.** Where the notice of appeal specifies only a part of the judgment, and is served only upon the parties whose interests would be affected by a reversal of the part specified: *Held*, that this court has no jurisdiction over the other parties, or over the judgment in so far as it affects them. *Dick v. Bird*, 14 Nev. 161.
41. **APPEAL FROM PART OF JUDGMENT—When May Be Taken—Divorce.** *Lake v. Lake*, 15 Nev. 230.

42. **JOINT JUDGMENT—AFFIRMANCE IN PART AND REVERSAL IN PART.** Where a joint demurrer to a complaint was sustained and judgment entered for defendants dismissing the action; and on appeal it appeared that the demurrer was not well taken as to one of the defendants: *Held*, that as to such defendant the judgment should be reversed, and affirmed as to the others. *Wood v. Olney*, 7 Nev. 109.
43. **VARIANCE—QUESTIONS RAISED FOR FIRST TIME IN APPELLATE COURT.** Questions as to variance between the allegations of the complaint and the proofs cannot be raised in the appellate court, when they were not raised at the trial, if an amendment could have been properly made to meet the objections. *Wills v. Bank of Nevada*, 23 Nev. 59.
44. **ATTACHMENT—WILL REVIEW ORDER.** Upon an appeal from a final judgment, this court will review an order of a district court dismissing an attachment, if the appeal is also taken from such order. *Williams v. Glasgow*, 1 Nev. 533.
45. **APPEAL ON RULINGS—MOTION FOR NEW TRIAL NOT NECESSARY.** A motion for new trial is not only unnecessary to authorize a review of rulings at the trial, but the much preferable practice is to take them up by bill of exceptions or statement on appeal. *Cooper v. Insurance Co.*, 7 Nev. 116.
46. **CLERICAL ERROR IN JUDGMENT MUST BE PRESENTED BELOW.** *Ehrhardt v. Curry*, 7 Nev. 221; *McCausland v. Lamb*, 7 Nev. 238.
47. **CROSS APPEALS—Affirmance of One Without Affecting the Other.** *State v. C. P. R. R. Co.*, 21 Nev. 172.
48. **CORRECTION OF ERRORS APPEARING IN JUDGMENT ROLL.** Where judgment on an open account included interest thereon (which the statute, in the absence of a special agreement, does not allow), and the error appeared in the judgment roll: *Held*, that it could be corrected in the supreme court by a modification of the judgment, although not called to the attention of, nor excepted to, in the lower court. *Flannery v. Anderson*, 4 Nev. 437.
49. **SECOND APPEAL—FORMER DECISION, UPON SAME POINT DISTINCTLY MADE ON SAME FACTS—RES JUDICATA.** This court has no power to review its own judgments in the same case upon the same facts except upon petition for rehearing. The decision of the appellate court on a previous appeal is, on a second appeal on substantially the same state of facts, *res judicata*. *Wright v. Carson W. Co.*, 22 Nev. 304.

Duty of Appellant—Transcript.

3435. SEC. 340. On an appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, and the statement, if there be one, certified by the respective attorneys of the parties to the appeal, or by the Clerk of the Court. On an appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below, such copies to be certified in like manner to be correct. If any written opinion be placed on file in rendering judgment or making the order in the court below, a copy shall be furnished, certified in like manner. If the appellant fails to furnish the requisite papers, the appeal may be dismissed.

Original Papers Sent Up, see Sec. 3862.

1. **FINDINGS NOT "WRITTEN OPINION."** The Practice Act, Sec. 340, when it speaks of any "written opinion placed on file in rendering judgment," does not refer to findings. *Corbett v. Job*, 5 Nev. 201; *Reno W. L. & L. Co. v. Osburn*, 24 Nev.
2. **APPEAL—TRANSCRIPT—ORIGINAL PAPERS.** Where, instead of a regular transcript, the original papers are sent up on the appeal, they must be certified to be such originals, and to constitute, in whole or in part, the record on appeal. Where there is no certificate to that effect, the appeal will, upon motion, be dismissed. *Holmes v. Iowa M. Co.*, 23 Nev. 23; *Peers v. Reed*, 23 Nev. 404.
3. **APPEAL—STATUTORY REGULATIONS—QUESTIONS TO BE CONSIDERED.** The method of taking appeals, and the questions to be considered thereunder by the appellate court, are matters of purely statutory regulation. *Burbank v. Rivers*, 20 Nev. 81.
4. **TRANSCRIPT WITHOUT STATEMENT.** Where a transcript on appeal contained neither a statement on motion for new trial nor on appeal: *Held*, that there was nothing in it for review except the judgment roll. *McCausland v. Lamb*, 7 Nev. 238.
5. **FAILURE OF TRANSCRIPT TO SHOW DISPOSITION OF MOTION FOR NEW TRIAL.** Judgment roll only will be looked into; and if no error appears in it, the judgment will be affirmed. *Neil v. Daniel*, 4 Nev. 436.

6. **POINTS NOT COVERED BY TRANSCRIPT NOT CONSIDERED.** Alleged error in refusing to grant a continuance cannot be considered by the supreme court, if the affidavits are not properly in the transcript, and there is no bill of exceptions, nor statement. *State v. Wallin*, 6 Nev. 280.
7. **RECORD ON APPEAL.** Papers not properly in the record on appeal will be stricken out on motion. *Stats. 1895*, p. 58, permitting original papers to be certified upon appeal, have not changed the method of presenting questions in the supreme court. *Streeter v. Johnson*, 23 Nev. 194; *Bliss v. Grayson*, 24 Nev.
8. **TRANSCRIPT MUST SHOW FACTS DIRECTLY.** *State v. Manhattan S. M. Co.*, 4 Nev. 318.
9. **TRANSCRIPT ON APPEAL—WHAT PAPERS AND DOCUMENTS SHOULD BE STRICKEN OUT.** The minutes of the court and all other matters not embraced in the statement on appeal, judgment roll, or authenticated as by law required, should, on motion, be stricken from the transcript on appeal. *Greeley v. Holland*, 14 Nev. 320; *Reinhart v. Co. D*, 23 Nev. 366; *Hoppin v. First N. Bank*, 24 Nev.
10. **HOW APPEAL SHOULD BE TAKEN.** In taking an appeal from orders based on affidavits, no statement on appeal is required. It is only necessary to annex the affidavits to the orders, and have them properly certified. *Weinrich v. Porieous*, 12 Nev. 102.
The fact that the orders are embodied in a bill of exceptions allowed by the Judge, is not sufficient to prevent a dismissal of the appeal, unless the affidavits are annexed to the orders, and a certificate given as required. *Id.*
11. **STATEMENT ON APPEAL—PAPERS NOT PART OF RECORD.** Papers not made a part of the statement on motion for new trial, nor otherwise identified as provided by the statute, cannot be considered upon the appeal. *Beck v. Thompson*, 22 Nev. 109.

Undertaking on Appeal—Proviso.

3436. SEC. 341. To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars; or that sum shall be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the Clerk, within five days after the notice of appeal is filed; *provided, however*, that nothing in this section shall apply when the State of Nevada, or any county of the State of Nevada, is the appellant; nor shall such undertaking, as provided for in this section, be necessary to perfect such appeal, when the action or proceeding is brought for and in the name of this state, or for and in the name of any county in the state. *As amended, Stats. 1875, 136; 1879, 23.*

See Sec. 3859.

1. **UNDERTAKING ON APPEAL—SUFFICIENCY OF.** An undertaking which complies with Section 342 of the Civil Practice Act, for the stay of execution, with the exception of binding the sureties to pay in gold coin: *Held*, to be a sufficient undertaking on appeal, as required by Section 341, for the payment "of all damages and costs" awarded on appeal. *State v. Cal. M. Co.*, 13 Nev. 203.

EXECUTED ON SUNDAY. An undertaking on appeal executed on Sunday is valid. The execution of such a bond is not "transacting judicial business," and is not prohibited by the statute. *Id.*

2. **APPEAL NOT EFFECTUAL UNTIL UNDERTAKING FILED.** *Peran v. Monroe*, 1 Nev. 484.
3. **WHEN APPEAL WILL BE DISMISSED.** When the appellant fails to furnish this court with a "notice of appeal" and "undertaking on appeal," as required by the statute, the appeal will be dismissed. *Gaudette v. Glissan*, 11 Nev. 184; *Spafford v. White River V. L. & L. Co.*, 24 Nev.; *Marx v. Lewis*, 24 Nev.
4. **DEPOSIT OF MONEY IN LIEU OF APPEAL BOND.** *Alt v. Cal. Fig Syrup Co.*, 18 Nev. 423.
5. **SEVERAL ORDERS—One Subject—One Appeal Bond.** *Edgecomb v. His Creditors*, 19 Nev. 149.

Undertaking of Appellant and Sureties—Stay of Execution.

3437. SEC. 342. If the appeal be from a judgment or order directing the payment of money, or from an order dissolving or refusing to dissolve an attachment, it shall not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant by two or more sureties.

stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, or double the sum of the value of the property attached, as the case may be, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against the appellant upon the appeal. When the judgment or order appealed from is made payable in a specified kind of money or currency, the undertaking required by this section shall be drawn and made payable in the same kind of money or currency specified in such judgment or order, and in case of any appeal from an order dissolving or refusing to dissolve an attachment, such undertaking shall be conditioned, that if the order appealed from or any part thereof be affirmed, the appellant shall pay to the opposing party on such appeal, all damages and costs caused by him by reason of said appeal and the stay of execution thereon. *As amended, Stats. 1887, 92.*

Documents Placed in Hands of Receiver.

3438. SEC. 343. If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or the Judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Execution of Conveyance.

3439. SEC. 344. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Sale or Delivery of Property.

3440. SEC. 345. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit nor suffer to be committed, any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment for a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency. In all other cases, not hereinbefore mentioned, the amount of the undertaking to stay the execution of the judgment or order shall be fixed by the court or the Judge thereof.

To Stay Proceedings.

3441. SEC. 346. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, or upon matter embraced therein; but the court below may proceed upon any other matter included in the action and not affected by the judgment or order appealed from. And the court below may, in its discretion, dispense with or limit the security required by said

sections, when an appellant is an executor, administrator, trustee, or other person acting in another's right.

ABOVE SECTION CONSTRUED. *Lake v. Lake*, 17 Nev. 230.

Undertakings May Be One or Several.

3442. SEC. 347. The undertaking prescribed by sections three hundred and forty and three hundred and forty-one, three hundred and forty-two and three hundred and forty-three, may be in one instrument or several, at the option of the appellant.

Affidavit of Sureties.

3443. SEC. 348. An undertaking on appeal shall be of no effect unless it be accompanied by the affidavit of the sureties that they are each worth the amount specified therein, over and above their just debts and liabilities, exclusive of the property exempt from execution; except where the judgment exceeds three thousand dollars and the undertaking on appeal is executed by more than two sureties, they may state, on their affidavit, that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and, unless they or other sureties justify before the Judge of the court below, or Clerk, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal by the provisions of this chapter, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking, and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Appeal Perfected.

3444. SEC. 349. In cases not provided for in sections three hundred and forty-one, three hundred and forty-two, three hundred and forty-three, and three hundred and forty-four, the perfecting of an appeal by giving the undertaking, and the justification of the sureties thereon, if required, or making the deposit mentioned in section three hundred and forty, shall stay proceedings in the court below upon the judgment or order appealed from, except that where it directs the sale of perishable property the court below may order the property to be sold, and the proceeds thereof to be deposited to abide the judgment of the appellate court.

Appeal, How Brought to Hearing.

3445. SEC. 350. Appeals may be brought to a hearing by either party upon a notice of three days to the opposite party. Before the argument each party shall furnish to the other, and to each of the Justices, a copy of his points and authorities, or either party may file one copy thereof with the Clerk, who shall cause the requisite copies to be made.

Lake v. Lake, 17 Nev. 230.

Judgment on Appeal, How Certified.

3446. SEC. 351. When judgment is rendered upon the appeal, it shall be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the Clerk with whom the roll is filed shall attach the certificate to the judgment roll and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the Clerk shall enter at length, in the records of the court, the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that the order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

Execution for Costs.

3447. SEC. 352. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same on filing a remittitur with the Clerk of the court below, and it shall be the duty of such Clerk, whenever the remittitur is filed, to issue the execution upon application therefor, and whenever costs are awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment.

FORM OF REMITTITUR. No peculiar form of nice technical exactness is required in a remittitur. *French v. Strong*, 4 Nev. 87.

TITLE X.*Miscellaneous Proceedings.***CHAPTER 1—PROCEEDINGS AGAINST JOINT DEBTORS.**

The provisions of Chapter 1, Title X, are made applicable to justices' courts by Section 589 of this Act.

Bound by Judgment.**J. C.**

3448. SEC. 353. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceedings as provided in section thirty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

JOINT JUDGMENT. Reversal as to one necessarily reverses as to all. *Bullion M. Co. v. Croesus G. & S. M. Co.*, 3 Nev. 336.

To Show Cause.**J. C.**

3449. SEC. 354. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and returnable within the same time, as the original summons. It shall not be necessary to file a new complaint.

Affidavit of Plaintiff.**J. C.**

3450. SEC. 355. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Answer and Defense.**J. C.**

3451. SEC. 356. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

Liability Denied.**J. C.**

3452. SEC. 357. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case. If he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Issues Formed.**J. C.**

3453. SEC. 358. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER 2—CONFESSION OF JUDGMENT WITHOUT ACTION.

Chapter 2 is made applicable to justices' courts, as to confession of judgment, by Section 512 of this Act.

By Confession.

J. C.

3454. SEC. 359. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter.

Statement in Writing.

J. C.

3455. SEC. 360. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: First—It shall authorize the entry of judgment for a specified sum. Second—If it be money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due, or to become due. Third—If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Statement Filed With Clerk.

J. C.

3456. SEC. 361. The statement shall be filed with the Clerk of the court in which the judgment is to be entered, who shall indorse upon it, and enter in the judgment book a judgment of such court for the amount confessed, with ten dollars costs. The judgment and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

JUDGMENT OF CONFESSION. Where a statement and affidavit of confession authorizing the entry of judgment was filed with the Clerk and the Clerk copied the statement and affidavit in the judgment book and added: "Judgment entered April 14, A. D. 1874; Attest, J. H. Job, Clerk," and indorsed the same on the back of the statement: *Held*, that this constitutes a valid judgment. *Humboldt M. & M. Co. v. Terry*, 11 Nev. 237.

CLERK'S DUTIES MINISTERIAL—Authority to Enter Judgment—Effect of Entry of Judgment. *Id.*

CHAPTER 3—SUBMITTING A CONTROVERSY WITHOUT ACTION.

Without Action.

3457. SEC. 362. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were pending.

Judgment.

3458. SEC. 363. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

How Enforced.

3459. SEC. 364. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER 4—OF ARBITRATIONS.

Arbitration.

3460. SEC. 365. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except

a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

ARBITRATION. Our statutory proceedings in cases of arbitration are in derogation of the common law, and must be strictly pursued. *Steel v. Steel*, 1 Nev. 27.

The filing of the submission, and the entry of the same in the Clerk's register, in cases of arbitration, answer the purposes of the complaint and answer in ordinary actions, and, like them, must be filed before a hearing, trial, or judgment. *Id.*

How Made.

3461. SEC. 366. The submission to arbitration shall be in writing, and may be to one or more persons.

Submission to Arbitration, How Entered.

3462. SEC. 367. It may be stipulated in the submission that it be entered as an order of the court, for which purpose it shall be filed with the Clerk of the Court, where the parties, or one of them, reside. The Clerk shall thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

Powers of Arbitrators.

3463. SEC. 368. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Proceedings of Arbitrators.

3464. SEC. 369. All the arbitrators shall meet and act together during the investigation, but, when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Award, How Made.

3465. SEC. 370. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the Clerk and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the Clerk in the judgment book, and shall thereupon have the effect of a judgment.

On What Grounds Vacated.

3466. SEC. 371. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing, before the same arbitrators, or not, in its discretion: First—That it was procured by corruption or fraud. Second—That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced. Third—That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

On What Grounds Modified.

3467. SEC. 372. The court may, on motion, modify or correct the award where it appears: First—That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein. Second—When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matter submitted. Third—When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Appeal.

3468. SEC. 373. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before a motion is made shall not be subject to appeal.

When Revoked.

3469. SEC. 374. If a submission to arbitration be revoked, and action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER 5—OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

Not to Prejudice.

3470. SEC. 375. The defendant may at any time before trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum, or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the Clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

TITLE XI.

All of Title XI is made applicable to justices' courts so far as the same is consistent with the jurisdiction and powers of justices' courts by Section 578 of this Act.

Of Witnesses, and of the Manner of Obtaining Evidence.

CHAPTER 1—OF WITNESSES.

Eligible Witnesses.

J. C.

3471. SEC. 376. All persons, without exception, otherwise than as specified in this chapter, who, having organs of sense, can perceive, and perceiving can make known their perceptions to others, may be witnesses in any action or proceeding in any court of the state. Facts which, by the common law, would cause the exclusion of witnesses may still be shown for the purpose of affecting their credibility. *As amended, Stats. 1881, 29.*

What Does Not Constitute Disqualification.

J. C.

3472. SEC. 377. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief, or by reason of his conviction of felony, but such conviction may be shown for the purpose of affecting his credibility, and the jury is to be the exclusive judges of his credibility, or by reason of his interest in the event of the action or proceeding as a party thereto, or otherwise, but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and be compellable to give evidence, either *viva voce* or by deposition or upon a commission, in the same manner and be sub-

ject to the same rules of examination as other witnesses on behalf of himself, or either or any of the parties to the action or proceeding. *As amended, Stats. 1881, 29.*

Refusal to Testify—Contempt.

J. C.

3473. SEC. 378. If a party refuse to attend and testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint, answer or reply may be stricken out and judgment be taken against him; and he may be also, in the discretion of the court, proceeded against as in other cases for a contempt.

Who Shall Testify—Competent Witness.

J. C.

3474. SEC. 379. No person shall be allowed to testify under the provisions of sections three hundred and seventy-six and three hundred and seventy-seven, when the other party to the transaction is dead, or when the opposite party to the action, or the person for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proven transpired before the death of such deceased person; *provided*, that when such deceased person was represented in the transaction in question by any agent who is living, and who testifies as a witness in favor of the representative of such deceased person, in such case the other party may also testify in relation to such transaction, and nothing contained in this Act shall affect the laws in relation to attestation of any instrument required to be attested; *and provided further*, that when husband or wife is insane and has been so declared by a commission of lunacy, or in due form of law, the other shall be a competent witness to testify as to any fact which transpired before or during such insanity, but the privilege of so testifying shall cease on the restoration to soundness of the insane husband or wife, unless upon the consent of both, in which case they shall be competent witnesses. *As amended, Stats. 1877, 160; 1879, 49; 1881, 80; 1897, 44.*

1. SECTIONS 376 AND 379 CONSTRUED. *Burgess v. Helm*, 24 Nev.

2. PRACTICE ACT, SECTION 379—MEANING OF "REPRESENTATIVE OF DECEASED PERSON." Where a person was employed by another to work at a quartz mill for an association, to whom such latter person had assigned a lease thereof; and after the death of the assignor, the employee sued the association for work and labor: *Held*, that none of the association was sued as the representative of deceased, and there was nothing in Section 379 of the Practice Act to prevent plaintiff from testifying as to the conversation and employment by deceased. *Fulton v. Day*, 8 Nev. 80.

3. SECTION 379, CIVIL PRACTICE ACT, CONSTRUED—SURVIVING PARTNERS NOT THE REPRESENTATIVES OF A DECEASED PERSON. *Held*, that the defendant Gloster was properly allowed to testify in his own behalf against the plaintiffs, who are the surviving partners of J. J. Hayes, deceased, to a contract made with Hayes previous to his death; that the plaintiffs, as surviving partners of said Hayes, are not the "representatives of a deceased person." *Crane v. Gloster*, 13 Nev. 279.

4. PARTY AS WITNESS AGAINST SURVIVING PARTNER. When a surviving partner is sued for a loan for the use of the firm made to the deceased partner, and of the particulars of which the deceased partner only was cognizant, the plaintiff is not a competent witness in his own behalf. *Roney v. Buckland*, 4 Nev. 45.

5. COMPETENCY OF WITNESSES—SECTION 379, CIVIL PRACTICE ACT, CONSTRUED. Where the administrator of a deceased person is plaintiff, and testifies to a contract made by the deceased person with the defendant in his presence: *Held*, that under the provisions of Section 379 the defendant could not testify in his own behalf. This provision of the statute criticised. *Vesey v. Benton*, 13 Nev. 284.

6. SECTION 379 OF THE CIVIL PRACTICE ACT—COMPETENCY OF WITNESS—INCIDENTAL OR MATERIAL FACTS. Where a witness is disqualified, under the provisions of Section 379 of the Civil Practice Act, he is a competent witness to testify to incidental and preliminary matters addressed solely to the Judge; but cannot testify to any of the issues raised by the pleadings. *Higgs v. Hanson*, 13 Nev. 356.

7. EXECUTORS COMPETENT WITNESSES ON THEIR OWN BEHALF. An executor is not within the exception of the Act excluding persons as witnesses on their own behalf, where the opposite party is the representative of a deceased person, etc. *Estate of Millenovich*, 5 Nev. 161.

Persons Excluded as Witnesses.

J. C.

3475. SEC. 380. The following persons cannot be witnesses: First—Those who are of unsound mind at the time of their production for examination. Second—Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. *As amended, Stats. 1881, 30.*

Husband and Wife.

J. C.

3476. SEC. 381. A husband cannot be examined as a witness for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to an action or proceeding by one against the other. *As amended, Stats. 1881, 30.*

Attorney and Client.

J. C.

3477. SEC. 382. An attorney or counselor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

Clergyman.

J. C.

3478. SEC. 383. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Physician.

J. C.

3479. SEC. 384. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; *provided, however*, in any suit or prosecution against a physician or surgeon for malpractice, if the patient or party suing or prosecuting shall require or give such consent, and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physicians or surgeons as witnesses on behalf of defendant, without the consent of such patient or party suing or prosecuting.

Public Officer.

J. C.

3480. SEC. 385. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Judge or Juror May Be Called.

J. C.

3481. SEC. 386. The Judge himself, or any juror, may be called as a witness by either party; but in such case it shall be in the discretion of the court or Judge to order the trial to be postponed, or suspended, and to take place before another Judge or jury.

Interpreters.

J. C.

3482. SEC. 387. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person resident of the county may be summoned by any Judge or court to appear before such Judge or court to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpoena. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and punished accordingly.

CHAPTER 2—MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

Subpena for Attendance of Witness.

J. C.

3483. SEC. 388. A subpena may require not only the attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, Judge, Justice, referee, or other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the county of trial; *provided*, that such witness shall have the right to demand payment in advance of his fees for one day's attendance, and his mileage to and from the place specified in the subpena.

Subpena, How Issued.

J. C.

3484. SEC. 389. The subpena shall be issued as follows: First—To require attendance before a court, it shall be issued in the name and under the seal of the court before which the attendance is required. Second—To require attendance out of court, before a Judge, referee, Justice or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it shall be issued by the Judge, referee, Justice, or other officer before whom the attendance is required. Third—To require attendance before a Commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other state, or of a territory of the United States, or any District Judge or Justice of the Peace of this state, it may be issued by a Judge or Justice of the Peace in places within their respective jurisdictions, with like power to enforce attendance and to punish contempt of such subpena as such Judge or Justice could exercise if the subpena directed the attendance of the witness before his own court, in a matter pending therein.

Subpena, How Served.

J. C.

3485. SEC. 390. The service of a subpena shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Where Witness is Concealed.

J. C.

3486. SEC. 391. If a witness be concealed in a building or vessel so as to prevent the service of a subpena upon him, any court or Judge, or any officer issuing the subpena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpena, and the Sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Persons Present in Court.

J. C.

3487. SEC. 392. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpena issued by such court or officer.

Duty of Witness.

J. C.

3488. SEC. 393. It shall be the duty of a witness, duly served with a subpena, to attend at the time appointed, with any papers under his control required by the subpena, to answer all pertinent and legal questions, and, unless sooner discharged, to remain till the testimony is closed.

Must Answer.

J. C.

3489. SEC. 394. A witness, shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to

punishment for a felony, nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact to his previous conviction for felony.

Disobedience, Punishment For.

J. C.

3490. SEC. 395. Disobedience to a subpoena, or a refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed or his answer stricken out.

Penalty for Disobedience.

J. C.

3491. SEC. 396. A witness disobeying a subpoena, shall also forfeit to the party aggrieved the sum of one hundred dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Failure to Attend.

J. C.

3492. SEC. 397. In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the Sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

Depositions of Convicts.

J. C.

3493. SEC. 398. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows: First—By the court itself in which the action or special proceeding is pending, unless it be a justice court. Second—By a Judge of the supreme court or district court where the action or proceeding is pending, if pending before a justice's court, or before a Judge or other person out of court. *As amended, Stats. 1881, 85.*

Maxwell v. Rives, 11 Nev. 213.

Affidavit Necessary.

J. C.

3494. SEC. 399. Such order can only be made on motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. *As amended, Stats. 1881, 85.*

Production of Witness When in Jail.

J. C.

3495. SEC. 400. If the witness be imprisoned in the county where the action or proceeding is pending, his production may, in the discretion of the court or Judge, be required; in all other cases his examination, when allowed, shall be taken upon deposition. *As amended, Stats. 1881, 85.*

ORDER OF JUDGE—SECTIONS 398, 399 AND 400 CONSTRUED. The law requiring an affidavit to be made of certain facts before the court should make an order to have the party in jail produced in court, was never designed for the protection of the prisoner, but only to prevent improper and unnecessary interference with the custody of prisoners. *Maxwell v. Rives, 11 Nev. 213.*

IDEM. If the order for the prisoner's attendance in court was improvidently granted, it is no concern of the prisoner; being before the court he was bound to answer any question that he would have been required to answer if the process for bringing him there had been strictly pursued. *Id.*

Exonerated from Arrest.

J. C.

3496. SEC. 401. Every person who has been in good faith served with a subpoena to attend as a witness before a court, Judge, Commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Liability of Officer.

J. C.

3497. SEC. 402. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption and make an affidavit, stating, first, that he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued; and, second, that he has not been thus served by his own procurement, with the intention of avoiding an arrest.

CHAPTER 3—ON AFFIDAVITS.**Affidavits, Before Whom Taken.**

J. C.

3498. SEC. 403. An affidavit to be used before any court, Judge, or officer of this state may be taken before any Judge or Clerk of any court, or any Justice of the Peace or Notary Public in this state.

Out of the State.

J. C.

3499. SEC. 404. An affidavit taken in another state, or in a territory of the United States, to be used in this state, shall be taken before a Commissioner appointed by the Governor of this state to take affidavits and depositions in such other state or territory, or before any Notary Public or Judge of a court of record having a seal. *As amended, Stats. 1883, 42.*

In Foreign Country.

J. C.

3500. SEC. 405. An affidavit taken in a foreign country to be used in this state shall be taken before an Ambassador, Minister or Consul of the United States, or before any Judge of a court of record having a seal in such foreign country.

How Certified When Taken Out of State.

J. C.

3501. SEC. 406. When an affidavit is taken before a Judge of a court in another state, or in a territory of the United States, or in a foreign country, the genuineness of the signature of the Judge, the existence of the court, and the fact that such Judge is a member thereof, shall be certified by the Clerk of the court, under the seal thereof.

CHAPTER 4—OF DEPOSITIONS TAKEN IN THIS STATE.**Testimony by Depositions.**

J. C.

3502. SEC. 407. The testimony of a witness in this state may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, after a question of fact has arisen therein, in the following cases: First, when the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended; second, when the witness resides out of the county in which his testimony is to be used; third, when the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required; fourth, when the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend, or resides within the county, but more than fifty miles from the place of trial.

REQUISITES OF AFFIDAVIT TO TAKE DEPOSITIONS. The affidavit required to be made to authorize the taking of the deposition of a witness within the state, has to show that the case is one of those mentioned in the statute, Practice Act, Sec. 407; but need not show that the summons has been served. *Lambert v. McFarland, 7 Nev. 159.*

Deposition, How Taken.

J. C.

3503. SEC. 408. Either party may have the deposition of a witness in this state taken before any Judge or Clerk of a court, or any Justice of the Peace or

Notary Public in this state, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, and his residence is unknown to the plaintiff, the notice required by this section may be served upon the Clerk of the court where the action is pending. Such notice shall be at least five days, and, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person upon whom the notice is served, unless, for a cause shown, a Judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Manner of Examination of Witnesses by Deposition.

J. C.

3504. SEC. 409. Either party may attend such examination and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the Clerk of the court in which the action is pending, or to such person as the parties, in writing, may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend, proof by affidavit or oral testimony shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

Read by Either Party.

J. C.

3505. SEC. 410. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

CHAPTER 5—OF DEPOSITIONS TAKEN OUT OF THIS STATE.

Testimony Taken Out of the State.

J. C.

3506. SEC. 411. The testimony of a witness out of the state may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding, at any time after a question of fact has arisen therein.

How Taken—By Whom Taken.

J. C.

3507. SEC. 412. The deposition of a witness out of this state shall be taken upon commission issued from the court, under the seal of the court, upon an order of the Judge or court, on the application of either party, upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or, if they do not agree, to any Judge or Justice of the Peace selected by the officer granting the commission, or to a Commissioner appointed by the Governor of this state to take affidavits and depositions in other states or territories.

AUTHORITY TO TAKE DEPOSITION. A commission to take a deposition, authenticated by the certificate of the Clerk under the seal of the court, and issued in pursuance of a former order of the court, is sufficient authority for taking the testimony of a witness. *Smith v. North American Company*, 1 Nev. 423.

Interrogatories to Be Settled.

J. C.

3508. SEC. 413. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, or at the time of granting the order for commission, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Commission, What to Authorize.

J. C.

3509. SEC. 414. The commission shall authorize the Commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope directed to the Clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

1. **AGREEMENT OF PARTIES.** Where the parties to a suit agree that a deposition may be taken at a certain place, during a certain month, before T, a Notary Public in another state, the deposition certified by T, made under his official seal as a Notary, may be read by either party without other proof that T was a Notary when the deposition was taken. The seal is prima facie evidence of his official character. *Sargent v. Collins*, 3 Nev. 260.
2. **EFFECT OF STIPULATION TO TAKE DEPOSITION.** *Blackie v. Cooney*, 8 Nev. 41.
3. **STIPULATION OF PARTIES TO SUIT.** May dispense with any certificate by the officer taking depositions. *Lockhart v. Mackie*, 2 Nev. 294.
4. When two cases are pending in the same court, between the same parties, a deposition may be taken upon one notice, affidavit, and commission, to be read in both cases. *Scott v. The Bullion Mining Co.*, 2 Nev. 81.
5. **CERTIFICATE TO DEPOSITION TAKEN OUT OF STATE—What to Contain—Certificate of Commissioner to His Own Official Character—Good.** *Blackie v. Cooney*, 8 Nev. 41.

Proceedings, When Not Postponed.

J. C.

3510. SEC. 415. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER 6—OF PROCEEDINGS TO PERPETUATE TESTIMONY.**Testimony.**

3511. SEC. 416. The testimony of a witness may be taken and perpetuated as provided in this chapter.

Petition to Be Presented to Judge.

3512. SEC. 417. The applicant shall present to a District Judge a petition verified by the oath of the applicant, stating: First, that the applicant expects to be a party to an action in a court in this state, and, in such case, the name or names of the person or persons whom he expects will be adverse parties; or, second, that the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and, third, the name of the witness to be examined and his place of residence, and a general outline of the facts expected to be proved.

Judge to Make Order.

3513. SEC. 418. The Judge to whom such petition is presented shall make an order allowing the examination before any Judge of a court of record, and prescribing the notice to be given, which notice, if the parties are known and reside in this state, shall be personally served on them, and if unknown, or non-residents, such notice shall be served on the Clerk of the county where the property to be affected by such testimony is situated, and a copy thereof published in some newspaper, to be designated by the Judge making the order.

Testimony Taken.

3514. SEC. 419. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the Judge before whom the testimony is ordered to be taken to proceed to take the testimony of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time, in the discretion of the Judge.

Examination, How Made.

3515. SEC. 420. The examination shall be by question and answer, unless the parties otherwise agree. The testimony, when completed, shall be carefully read to and subscribed by the witness, then certified by the Judge, and immediately thereafter filed in the office of the Clerk of the district court of the county where it was taken, together with the order for the examination of the witness, the petition on which the same was granted, and the proof of service of the notice.

Affidavit Prima Facie Proof.

3516. SEC. 421. The affidavits or other proof filed with the testimony, or certified copies thereof, shall be prima facie evidence of the facts stated therein.

Testimony, How Used.

3517. SEC. 422. If the trial be had between the persons named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such testimony proves or tends to prove, upon proof of the death or insanity of the witness, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the testimony, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial unless the same was stated at the examination.

CHAPTER 7—ADMINISTRATION OF OATHS AND AFFIRMATIONS.**Who May Administer Oath.**

J. C.

3518. SEC. 423. Every court of this state, every Judge or Clerk of any court, every Justice of the Peace, and every Notary Public, and every officer authorized to take testimony, or to decide upon the evidence in any proceeding, shall have power to administer oaths or affirmations.

How Sworn.

J. C.

3519. SEC. 424. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Affirmation Instead of Oath.

J. C.

3520. SEC. 425. Any witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed in the following form: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between-----and-----, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

CHAPTER 8—INSPECTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.**On Refusal to Give Copy Court May Exclude Document.**

J. C.

3521. SEC. 426. Any court in which an action is pending, or a Judge thereof may, upon notice, order either party to give to the other within a specified time an inspection and copy, or permission to take a copy of any book, document, or paper in his possession, or under his control, containing evidence relating to the

merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

Evidence of Contents of Writing.

J. C.

3522. SEC. 427. There shall be no evidence of the contents of a writing, other than the writing itself, except in the following cases: First—When the original has been lost or destroyed; in which case proof of the loss or destruction shall first be made. Second—When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice. Third—When the original is a record or other document in the custody of a public officer, or officer of a corporation. Fourth—When the original has been recorded and a certified copy of the record is made evidence by statute. Fifth—When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

EVIDENCE—ORAL RESULT OF EXAMINATION OF LONG ACCOUNTS. Where it became material and relevant to know the amount of money which should have been in the state treasury on a certain day: *Held*, that it was competent, under Section 427 of the Practice Act, as well as under the law independent of it, for an expert, who had made a full investigation of the accounts of the office, to state orally the result of his examination. *State v. Rhoades*, 6 Nev. 352.

Alterations Must Be Accounted For.

J. C.

3523. SEC. 428. The party producing a writing as genuine, which has been altered, or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Judicial Record Proved by Production.

J. C.

3524. SEC. 429. A judicial record of this state, or the United States, or of any territory, may be proved by the production of the original, or a copy thereof, certified by the Clerk, or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

How Records to Be Attested.

J. C.

3525. SEC. 430. The records and judicial proceedings of the courts of any other state of the United States, or of any territory, may be proved or admitted in the courts of this state, by the attestation of the Clerk, and seal of the court annexed, if there be a seal, together with a certificate of the Judge, Chief Justice or presiding magistrate, as the case may be, that the said attestation is in due form.

Judicial Record of Foreign Country, How Certified.

J. C.

3526. SEC. 431. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the Clerk, with the seal of the court annexed, if there be a Clerk and seal, or by the legal keeper of the record, with the seal of his office annexed, if there be a seal, to be a true copy of such record, together with a certificate of a Judge of the Court, that the person making the certificate is the Clerk of the Court, or the legal keeper of the record, and in either case that the signature is genuine, and the certificate in due form; and, also, together with the certificate of the Minister or Ambassador of the United States, or of a Consul of the United States, in such foreign country, that there is such a

court, specifying generally the nature of its jurisdiction, and verifying the signature of the Judge and Clerk, or other legal keeper of the record.

When Foreign Record Admissible.

J. C.

3527. SEC. 432. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: First—That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second—That such original was in the custody of the Clerk of the Court or other legal keeper of the same; and, Third—That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

Printed Statutes, etc.

J. C.

3528. SEC. 433. Printed copies in volumes of statutes, code or other written law, enacted by any other state, or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the courts and judicial tribunals of such state, territory, or government, shall be admitted by the courts and officers of this state on all occasions as presumptive evidence of such laws.

Seal of Court.

3529. SEC. 434. A seal of a court or public office, when required to any writ or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XII.

Of the Writ of Certiorari and Mandamus.

CHAPTER 1—THE WRIT OF CERTIORARI OR REVIEW.

Denomination Of.

3530. SEC. 435. The writ of certiorari may be denominated the writ of review.

When Writ Should Be Granted.

3531. SEC. 436. This writ may be granted on application by any court of this state, except a justice's, or recorder's, or mayor's court; the writ shall be granted in all cases when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

1. CERTIORARI. A writ of certiorari is not inhibited to a party aggrieved in all proceedings or actions wherein a right of appeal is given. *Paul v. Armstrong*, 1 Nev. 82.

See *Leonard v. Peacock*, 8 Nev. 157; *Nev. Cent. R. Co. v. Dist. Court*, 21 Nev. 409.

2. CERTIORARI—WHEN LIES TO BOARD OF COUNTY COMMISSIONERS. The writ of certiorari will only run to a Board of County Commissioners as to matters in which they exercise judicial functions. *Thompson v. Com. Washoe Co.*, 23 Nev. 247.

DEFECT OF PARTIES—Writ Dismissed. *Id.*

3. APPEAL—JUSTICE COURT—CERTIORARI. No appeal to the district court lies from a judgment by default rendered in a justice court, there being no issue of law or fact to be tried upon such appeal, and where in such case the justice court has exceeded its jurisdiction, certiorari is the proper remedy. *Wiggins v. Henderson*, 22 Nev. 103.

Application for Writ on Affidavit.

3532. SEC. 437. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without further notice.

To Whom Directed.

3533. SEC. 438. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk, if there be one, shall return the writ with the transcript required.

What to Command.

3534. SEC. 439. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

When Stay of Proceedings Not Wanted.

3535. SEC. 440. If a stay of proceedings be not intended the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer shall not be suspended nor the proceedings stayed.

How Served.

3536. SEC. 441. The writ shall be served in the same manner as a summons in civil action, except when otherwise expressly directed by the court.

Extent of Review.

3537. SEC. 442. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

1. **JURISDICTION THE QUESTION ON CERTIORARI.** The only question which can be inquired into on certiorari is whether the inferior board or tribunal had jurisdiction to do the act sought to be reviewed. *State v. Com. Washoe Co.*, 5 Nev. 317; *Maynard v. Riley*, 2 Nev. 313; *Fall v. Com. Humboldt Co.*, 6 Nev. 100; *Phillips v. Welch*, 12 Nev. 158; *In Re O'Rourke*, 13 Nev. 253; *Hetzel v. Com. Eureka Co.*, 8 Nev. 359; *Esmeralda Co. v. District Court*, 18 Nev. 438; *In Re Wixom*, 12 Nev. 219; *Maxwell v. Rives*, 11 Nev. 213; *Fletcher v. Osburn*, 24 Nev.
2. **RETURN TO WRIT OF CERTIORARI CONCLUSIVE.** No more of the facts are required to be returned to a writ of certiorari than are necessary to determine jurisdiction and the return being deemed conclusive, no evidence, not included therein, will be received and examined. *Alexander v. Archer*, 21 Nev. 22.
3. **NO EXCESS OF JURISDICTION.** The facts of this case elaborately reviewed: *Held*, that the court, in adjudging petitioner guilty of a contempt, in violating the decree and order in the suit of *Phillips v. Welch*, did not exceed its jurisdiction, and that this court cannot, upon the writ of certiorari, review the case upon the merits. *Phillips v. Welch*, 12 Nev. 159.
4. **CERTIORARI—LEGALITY OF COSTS—NOT REVIEWABLE.** If the court erred in allowing any costs that were not taxable against the relator, it was not an excess of jurisdiction, and its action, in this respect, can not be reviewed upon certiorari. *Quinn v. Dist. Court*, 16 Nev. 76.
5. **JUSTICE OF THE PEACE—ISSUANCE OF EXECUTION A MINISTERIAL ACT.** A Justice of the Peace, in issuing an execution upon a judgment, acts ministerially, and such act, however erroneous, cannot be reviewed upon certiorari. *In Re O'Rourke*, 13 Nev. 253.
6. **WEIGHT OF EVIDENCE NOT OBJECT OF REVIEW.** *State v. Ormsby Co.*, 7 Nev. 392.
7. **ORDER ON PROCEEDINGS AGAINST GARNISHEE.** Not reviewable on certiorari. *Birchfield v. Harris*, 9 Nev. 382.
8. **CERTIORARI—JUDICIAL OFFICERS—WHAT ACTS CAN BE REVIEWED.** The action of a judicial officer in regard to matters which are exclusively executive or administrative in their nature, even when the act of the legislature requiring such duties to be performed is in violation of the constitutional provision, cannot be reviewed by certiorari. *Esmeralda Co. v. District Court*, 18 Nev. 438.
9. **CERTIORARI.** Criminal proceedings constituted for offense committed upon land, jurisdiction of which has been ceded by state to United States, annulled. *Jones v. Mack*, 23 Nev. 359.

10. WHEN WRIT WILL ISSUE—COUNTY COMMISSIONERS. The power of County Commissioners to allow accounts against a county is confined to those "legally chargeable," and a writ of certiorari will issue to review their action. *Beck v. Com. Washoe Co.*, 14 Nev. 86.
- CERTIORARI—WHEN WILL NOT BE ISSUED—CLAIMS AGAINST COUNTY. A writ of certiorari will not be issued to review claims against a county which have been audited, allowed and paid. *Id.*
11. CERTIORARI DOES NOT LIE for error in taxing costs. *Thompson v. Dist. Court*, 23 Nev. 243.
12. INADMISSIBLE RETURN—May Be Stricken out. *State v. Washoe Co.*, 7 Nev. 83.
- WHAT RETURN MAY INCLUDE. *Id.*
13. CERTIORARI WILL NOT LIE to determine validity of incorporation of city. *Fletcher v. Osburn*, 24 Nev.
- NOR TO DETERMINE MINISTERIAL ACT OF COUNCILMEN. *Id.*
14. CERTIORARI—NO AFFIRMATIVE ACTION AFTER PROCEEDINGS ANNULLED. If proceedings of an inferior court are annulled on certiorari, there is no further positive or affirmative action to be taken by the inferior tribunal. *Leonard v. Peacock*, 8 Nev. 157.
15. CERTIORARI—Judgment of District Court, When Not a Bar. *Twaddle v. Com. Washoe Co.*, 12 Nev. 17.

Return of Writ.

3538. SEC. 443. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

RECORD ON CERTIORARI CONCERNING ACTION OF BOARDS OF COUNTY COMMISSIONERS. On certiorari against a Board of County Commissioners a motion by respondent to file and make a part of the record, papers not embraced in the record or proceedings of the Board, should be denied. *Hayes v. Com. White Pine Co.*, 22 Nev. 80.

Judgment Transmitted.

3539. SEC. 444. A copy of the judgment, signed by the Clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Judgment Roll—Appeal.

3540. SEC. 445. A copy of the judgment, signed by the Clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceedings be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

JUDGMENT ROLL IN CERTIORARI CASES. In certiorari cases the judgment roll is preserved in the court granting the writ, as in a court of original jurisdiction in an ordinary action, and a copy only of the judgment is sent to the inferior tribunal. *Leonard v. Peacock*, 8 Nev. 157.

CHAPTER 2—THE WRIT OF MANDATE OR MANDAMUS.

Denominated.

3541. SEC. 446. The writ of mandamus may be denominated the writ of mandate.

In What Cases May Issue.

3542. SEC. 447. It may be issued by any court in this state, except a justice's, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

1. MANDAMUS, WHEN ONLY TO BE RESORTED TO. The writ of mandamus should be resorted to only when the usual and ordinary remedies fail to afford adequate relief, and without it there would be a failure of justice. *Torreyson v. Com. Storey Co.*, 22 Nev. 263.
2. MANDAMUS WILL NOT ISSUE where petitioner has a plain, speedy and adequate remedy at law. *Mayberry v. Bowker*, 14 Nev. 336; *State v. Guerrero*, 12 Nev. 105.

3. **MANDAMUS—WHEN PROPER REMEDY.** The mere fact that an action or proceeding will lie does not necessarily supersede the remedy by mandamus. The relator must not only have a specific, adequate and legal remedy, but it must be one competent to afford relief upon the very subject matter of his application. *Sears v. Wright*, 10 Nev. 167.

How SERVED—Demand for Election of Trustees—Upon Whom Served—How Directed—Verification of Petition—Intervention in Mandamus—Interest of Relator. *Id.*

4. **MANDAMUS PROPER REMEDY** to put one into an office where the title of the relator is clear, and no other person is claiming the office under color of right. *Cutts v. McCullough*, 3 Nev. 202; *Ryan v. Cronan*, 23 Nev. 437.

AFFIDAVIT AND NOT WRIT SHOULD CONTAIN ALLEGATIONS. *Id.*

5. **MANDAMUS, WHEN IT LIES.** Mandamus lies to compel an inferior tribunal to exercise its judgment and render a decision, when a failure of justice would otherwise result from delay or refusal to act; but it does not lie to review or correct its conclusion after it has acted. *State v. Com. Eureka Co.*, 8 Nev. 309; *Floral Springs M. Co. v. Rives*, 14 Nev. 431.

6. **MANDAMUS WILL NOT LIE—When.** *Hoppin v. Cheney*, 24 Nev.

7. **MANDAMUS, ITS FUNCTION.** The office of mandamus may be to compel the action, but it cannot be to correct the errors of an inferior court. When such court has acted, its action, however informal or erroneous, cannot be set aside or reversed by such writ. *Treadway v. Wright*, 4 Nev. 119.

Cavanaugh v. Wright, 2 Nev. 166, as to the propriety of mandamus to compel an inferior court to proceed with a trial, cited with approval. *Id.*

8. **MANDAMUS PROPER REMEDY** to put officer in charge of corporation. *Ryan v. Cronan*, 23 Nev. 437.

9. **MANDAMUS—Review of Action of Registry Agent.** *McGuire v. Waterman*, 5 Nev. 323; *Davies v. McKeeby*, 5 Nev. 369.

WRIT NOT ISSUED WHEN FRUITLESS. *Id.*

10. **MANDAMUS—Proper Remedy to Compel Commissioners to Allow Claim Based on Judgment.** *Humboldt Co. v. Lander Co.*, 22 Nev. 71.

WHEN LIES AS TO JUDGMENT AND DISCRETION OF OFFICER—Discussed. *Id.*

11. **MANDAMUS WILL LIE** to Compel County Commissioners to Levy Special Tax. *Davis v. Com. Lincoln Co.*, 23 Nev. 26, and 25 Nev.

12. **MANDAMUS.** May be invoked to compel trustees of a corporation to call election. *Flagg v. Trustees Lady Bryan Co.*, 4 Nev. 400.

NEGLECT OF ONE DUTY NO EXCUSE FOR NEGLECT OF ANOTHER. *Id.*

EXTENT OF REQUIREMENTS OF WRIT OF MANDAMUS—Construction of Pleading. *Id.*

13. **LAND REGISTER.** Mandamus will issue to compel him to enter into contract for sale of state land. *Springer v. Preble*, 20 Nev. 38.

14. **SALE OF STATE LAND—Simultaneous Applications—When Mandamus Should Not Issue.** *Sohl v. Preble*, 20 Nev. 44.

15. **MANDAMUS—SETTLEMENT OF STATEMENT.** Mandamus is a proper remedy to compel a District Judge to settle a statement on motion for new trial in a case where it is his duty to settle the statement. *Kean v. Murphy*, 19 Nev. 89.

JUDICIAL OFFICER—PRELIMINARY QUESTIONS. The rule that mandamus will not issue to control discretion, or revise judicial action, has no application to the determination of preliminary questions relating to the settlement of a statement on motion for new trial. *Id.*

16. **MANDAMUS** will not issue to compel Controller to allow greater amount than is allowed by Board of Examiners. *Lyon Co. v. Hallock*, 20 Nev. 326.

17. **MANDAMUS—STATE CONTROLLER.** Will issue to compel him to perform act required by law. *State v. Hobart*, 12 Nev. 408.

18. **MANDAMUS** will issue to compel Trustees to admit negro to school. *State v. Duffy*, 7 Nev. 342.

19. **ORDER REFUSING TRANSFER OF CAUSE TO UNITED STATES COURT—Reviewed on Appeal—Not Mandamus.** *State v. Curler*, 4 Nev. 445.

20. **MANDAMUS—DISMISSAL OF ACTION.** Where a Justice has dismissed an action, a writ of mandamus will not lie to compel him to proceed and try the action, although such dismissal was error. *Nev. Cent. R. Co. v. District Court*, 21 Nev. 409.

21. **MANDAMUS** will not lie to compel a County Treasurer to make statement after his term has expired. *Com. Storey Co. v. Kirman*, 17 Nev. 380.

22. **MANDAMUS—Not Proper Remedy to Try Title to an Office.** *Denver v. Hobart*, 10 Nev. 28.

23. **MANDAMUS IMPROPER WHERE EJECTMENT AFFORDS FULL REMEDY.** *Com. Washoe Co. v. Hatch*, 9 Nev. 357.

24. **MANDAMUS—JUDICIAL FUNCTIONS.** A subordinate body can be directed to act, but not how to act, in a matter as to which it has the right to exercise its judgment; and where it is vested with power to determine a question of fact, the duty is judicial, and however erroneous its decision may be, it cannot be compelled by mandamus to alter its determination. *Hoole v. Kinhead*, 16 Nev. 217.
25. **MANDAMUS—COMMAND OF WRIT.** Where discretion is allowed in performing an act, mandamus will not control such discretion. *Humboldt Co. v. Churchill Co.*, 6 Nev. 30.
- PREVIOUS DEMAND, WHEN NECESSARY.** *Id.*
- Omission of Duty by County Commissioners—Mandamus Proper Remedy.** *Id.*
26. **MANDAMUS.** Where the law specially enjoins a duty upon the County Commissioners, and leaves them no discretion, mandamus is the proper remedy to enforce the performance of the law. *Mau v. Liddle*, 15 Nev. 271; *Owen v. Nye Co.*, 10 Nev. 338.
27. **MANDAMUS WILL NOT LIE** to compel City Council to enter into contract. *Schaw v. Noyes*, 24 Nev.
28. **MANDAMUS—PETITION FOR, WHAT MUST AFFIRMATIVELY APPEAR IN.** A petition for mandamus must show on its face a clear legal right to that for which it is sought in the proceeding. *Pyne v. LaGrave*, 22 Nev. 417.
29. **WHAT MUST BE SHOWN.** The relator must show, not only that the officer has failed to perform the required duty, but that the performance thereof is actually due from him at the time of the application. *Piper v. Gracey*, 11 Nev. 223.
- COLLECTION OF TAXES—Private Citizen May Move for Writ.** *Id.*
30. **MANDAMUS.** Pleadings construed the same as in other actions. *Cutts v. McCullough*, 3 Nev. 202; *State v. Lady Bryan M. Co.*, 4 Nev. 401.
31. **MANDAMUS WILL NOT ISSUE BEFORE RESPONDENT IS IN ACTUAL DEFAULT.** *State v. Rising*, 15 Nev. 164.
32. **COSTS, HOW TAXED.** *State v. Bonnifield*, 10 Nev. 401.
33. **RELATOR, WHEN ENTITLED TO COSTS.** *Cutts v. McCullough*, 3 Nev. 202.

Issued on Affidavit.

3543. SEC. 448. This writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

Writ Either Alternative or Peremptory.

3544. SEC. 449. The writ shall be either alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

When Alternative or Peremptory Will Issue.

3545. SEC. 450. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

Answer to Writ May Show Cause.

3546. SEC. 451. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

May Order Jury Trial.

3547. SEC. 452. If an answer be made, which raises a question as to matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the

application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

Objections to Sufficiency.

3548. SEC. 453. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

New Trial May Be Had.

3549. SEC. 454. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section one hundred and ninety-seven. The motion for a new trial may, upon reasonable notice, be brought on before the Judge of the court in which the cause was tried either in term or vacation. If a new trial be granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

Clerk to Transmit Verdict.

3550. SEC. 455. If no notice for a new trial be given, or, if given, be denied, the Clerk, within five days after the rendition of the verdict, or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict, attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

Hearing of Case.

3551. SEC. 456. If no answer be made, the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question such as is mentioned in section four hundred and fifty-two, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear, or fix a day for hearing, the argument of the case.

Judgment and Execution.

3552. SEC. 457. If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and peremptory mandate shall also be awarded without delay.

Writ, How Served.

3553. SEC. 458. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the order of the court.

Penalty for Refusal to Obey Writ.

3554. SEC. 459. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, or board, or such person, upon whom the writ has been personally served, has, without just excuse, refused or neglected to pay the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three

months, and may make any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a Judge or officer who draws a salary from the state or county, a certified copy of the order shall be forwarded to the Controller or County Treasurer, as the case may be, and the amount thereof may be retained from the salary of such Judge or officer. Such Judge or officer, for his willful disobedience, shall also be deemed guilty of a misdemeanor in office.

TITLE XIII.

Of Contempts and Their Punishments.

What Deemed Contempt.

3555. SEC. 460. The following acts or omissions shall be deemed contempts: First—Disorderly, contemptuous, or insolent behavior towards the Judge whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators, while sitting on a reference or arbitration, or other judicial proceeding. Second—A breach of the peace, boisterous conduct, or violent disturbance in the presence of the court, or in its immediate vicinity, tending to interrupt the due course of a trial, or other judicial proceeding. Third—Disobedience or resistance to any lawful writ, order, rule, or process issued by the court or Judge at chambers. Fourth—Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth—Rescuing any person or property in the custody of an officer by virtue of an order or process of such court or Judge at chambers. Sixth—Disobedience to the order or direction of the court made pending the trial of an action, in speaking to or in the presence of a juror concerning an action in which such juror has been impaneled to determine, or in any manner approaching or interfering with such juror, with the intent to influence his verdict.

1. **CONTEMPT—CONSTRUCTION OF STATUTES.** The statute relating to contempts and punishments must be strictly construed, and no interpretation should be given beyond its obvious meaning. *Ex Parte Sweeney*, 18 Nev. 74; *Maxwell v. Rives*, 11 Nev. 213.

2. **CONTEMPT—CRIMINAL PROCEEDING, WHEN.** A contempt for the disobedience of a decree and violation of an injunction is in the nature of a criminal offense, and the proceeding for its punishment is in the nature of a criminal proceeding. *Id.*

3. **CONTEMPT OF COURT—WHEN PROCESS IS CIVIL—**If the contempt consists in the refusal of a party to do something which he is ordered to do for the benefit or advantage of the opposite party, the process is civil, and he stands committed till he complies with the order. The order in such case is not punitive, but coercive. *Phillips v. Welch*, 11 Nev. 187. **WHEN PROCESS IS CRIMINAL.** If the contempt consists in the doing of a forbidden act, injurious to the opposite party, the process is criminal, and conviction is followed by a penalty of fine or imprisonment, or both, which is purely punitive. *Id.*

APPELLATE JURISDICTION. This court has no appellate jurisdiction in cases of contempt where the proceeding is purely criminal. *Id.*

4. **JURISDICTION—CONTEMPT.** Jurisdiction as applied to any particular claim or controversy is the power to hear and determine that controversy, and where a person is charged with violating the decree of a court, no other court, except the one rendering the decree can hear or determine the controversy, or punish such person if found guilty of a contempt. *Phillips v. Welch*, 12 Nev. 159.

CONTEMPT—JUDGMENT OF CONVICTION FINAL AND CONCLUSIVE. *Id.*

HABEAS CORPUS DOES NOT LIE when conviction for contempt properly had. *Id.*

5. **CONTEMPT—HABEAS CORPUS.** It is not a contempt of court to fail to comply with an order which the court had no jurisdiction to make, and a party imprisoned for a contempt committed under such circumstances will be discharged upon habeas corpus. *Ex Parte Gardner*, 22 Nev. 281.

When Punishable Summarily.

3556. SEC. 461. When a contempt is committed in the immediate view and presence of the court or Judge at chambers, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the con-

tempt is not committed in the immediate view and presence of the court or Judge at chambers, an affidavit shall be presented to the court or Judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

1. **CONTEMPT—AFFIDAVIT FOR VERIFICATION OF.** The affidavit for contempt need not show, upon its face, that the party verifying the same is beneficially interested in the proceedings. *Strait v. Williams*, 18 Nev. 430.

SUFFICIENCY OF AFFIDAVIT. In case of an alleged contempt for the violation of a decree of the district court, an affidavit is sufficient to give the court jurisdiction, if it substantially states the fact of the rendition of judgment restraining the party from doing certain acts, that the judgment is in full force and effect, and that the party enjoined has disobeyed the decree, and threatens to continue a violation thereof. *Id.*

2. **AFFIDAVIT, SUFFICIENCY OF.** *Phillips v. Welch*, 12 Nev. 158.

Attachment for Contempt, When to Issue.

3557. **SEC. 462.** When the contempt is not committed in the immediate view and presence of the court or Judge, a warrant of attachment may be issued to bring the person charged to answer, or without a previous arrest a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Bail May Be Given.

3558. **SEC. 463.** Whenever a warrant of attachment is issued pursuant to this chapter, the court or Judge shall direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Duty of Sheriff.

3559. **SEC. 464.** Upon executing the warrant of attachment, the Sheriff shall keep the person in custody, bring him before the court or Judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Discharge from Arrest.

3560. **SEC. 465.** When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or Judge thereupon; or they will pay as may be directed the sum specified in the warrant.

Return of Warrant.

3561. **SEC. 466.** The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

Investigation of Charges.

3562. **SEC. 467.** When the person arrested has been brought up or appeared, the court or Judge shall proceed to investigate the charge, and shall hear any answer which the person arrested shall make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Penalty for Contempt.

3563. **SEC. 468.** Upon the answer and evidence taken, the court or Judge shall determine whether the person proceeded against is guilty of the contempt charged; and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

months, and may make any orders necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a Judge or officer who draws a salary from the state or county, a certified copy of the order shall be forwarded to the Controller or County Treasurer, as the case may be, and the amount thereof may be retained from the salary of such Judge or officer. Such Judge or officer, for his willful disobedience, shall also be deemed guilty of a misdemeanor in office.

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Penalty for Contempt.

3563. **SEC. 468.** Upon the answer and evidence taken, the court or Judge shall determine whether the person proceeded against is guilty of the contempt charged; and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

Act of Omission, Contempt.

3564. SEC. 469. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act shall be specified in the warrant of commitment.

Indictment for Contempt.

3565. SEC. 470. Persons proceeded against according to the provisions of this chapter shall also be liable to indictment for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on an indictment, in passing sentence shall take into consideration the punishment before inflicted.

When Defendant Does Not Appear.

3566. SEC. 471. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or Judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Duty of Officer.

3567. SEC. 472. Whenever, by the provisions of this chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or Judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Penalty for Contempt.

3568. SEC. 473. In cases of contempt the punishment shall be by fine and imprisonment; but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and sixty-nine.

FINE—IMPRISONMENT FOR NON-PAYMENT OF. *Held*, that the fine imposed in such cases is punitive, inflicted for the public good; that imprisonment for non-payment of the fine is but a mode, provided by statute, for the enforcement of the fine, incident to the power given to the court to impose the fine, and that it cannot be regarded in the light of punishment. *Ex Parte Sweeney*, 18 Nev. 74.

TITLE XIV.*Of Costs.***Compensation of Attorneys.**

3569. SEC. 474. The measure and mode of compensation of attorneys and counselors shall be left to the agreement, express or implied, of the parties, but there shall be allowed to the prevailing party in any action in the supreme and district courts, his costs and necessary disbursements, in the action or special proceeding in the nature of an action.

Costs, When Allowed.

3570. SEC. 475. Costs shall be allowed of course to the plaintiff, upon a judgment in his favor in the following cases: First—In an action for the recovery of real property. Second—In an action to recover the possession of personal property, when the value of the property amounts to three hundred dollars or over, such value shall be determined by the jury, court, or referee by whom the action is tried. Third—In an action for the recovery of money or damages, where plain-

tiff recovers three hundred dollars or over. Fourth—In a special proceeding in the nature of an action.

COSTS—REGULARLY ENTERED—BECOME PART OF JUDGMENT, AND NOT SUBJECT TO COLLATERAL ATTACK. When regularly entered up in a judgment the costs of the action become a part of the judgment, and their amount and justice are not subject to collateral attack. *Humboldt Co. v. Lander Co.*, 22 Nev. 71.

Several Actions—Costs Allowed for One Only.

3571. SEC. 476. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this state; but the disbursements of the plaintiff shall be allowed to him in each action.

Costs Allowed Defendant.

3572. SEC. 477. Costs shall be allowed of course to the defendant upon a judgment in his favor in the actions mentioned in section four hundred and seventy-five, and in a special proceeding in the nature of an action.

When Allowed or Not—Discretion of Court.

3573. SEC. 478. In other actions than those mentioned in section four hundred and seventy-five, costs may be allowed or not, and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages when the plaintiff recovers less than three hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than three hundred dollars.

1. **COSTS WHERE RECOVERY LESS THAN \$300.** The provision of Section 478, Practice Act, that no costs shall be allowed when less than \$300 is recovered, is obviously confined to cases in the district courts, and was evidently adopted to prevent the bringing of actions in those courts which should or might be instituted in justices' courts. *Klein v. Allenbach*, 6 Nev. 159.

2. **PLAINTIFF ENTITLED TO COSTS**, though less than \$300 recovered. *Randall v. Com. Lyon Co.*, 20 Nev. 35.

3. **COSTS ON MOTIONS.** It is within the power of a court to permit the costs of motions made during the progress of the trial, such as to quash the service of summons, etc., to abide the event of the suit; there being no statute or rule of practice requiring the costs of such motions to be taxed against the losing party. *Caples v. C. P. R. Co.*, 6 Nev. 265.

NOTICE OF MOTION TO RETAX COSTS—When Made. *Id.*

4. **COSTS IN EQUITY—SPECIFIC PERFORMANCE CASES.** Costs in equity are in the discretion of the court; and if a plaintiff unreasonably enforce an equitable right, depriving defendant of an opportunity to satisfy the claim made against him without suit, the relief may be granted without costs, or plaintiff may be compelled to pay defendant's costs. *Welland v. Huber*, 8 Nev. 203.

5. **COSTS ON CORRECTING ERROR IN JUDGMENT ROLL—Will Be Allowed, When.** *Flannery v. Anderson*, 4 Nev. 437.

Failure to Recover Against All Defendants.

3574. SEC. 479. When there are several defendants in the actions mentioned in section four hundred and seventy-five, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Costs of Appeal.

3575. SEC. 480. In the following cases the costs of an appeal shall be in the

discretion of the court: First—When a new trial is ordered. Second—When a judgment is modified.

1. COSTS ON APPEAL—Payment as Condition Precedent, Not Upheld. *Gallagher v. Dunlap*, 2 Nev. 326.
2. PREVAILING PARTY ENTITLED TO, though error technical and defense frivolous. *Mavrich v. Grier*, 3 Nev. 52.

Fee of Referee.

3576. SEC. 481. The fees of referees shall be fifteen dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Costs for Postponement.

3577. SEC. 482. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Action for Recovery of Money—Tender.

3578. SEC. 483. When, in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegations be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

Where Administrator Is Party.

3579. SEC. 484. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting and defending in his own right; but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Costs on Review.

3580. SEC. 485. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

McFadden v. Ellsworth M. & M. Co., 8 Nev. 57.

Memorandum of Cost to Be Delivered.

3581. SEC. 486. The party in whose favor judgment is rendered and who claims his costs, shall deliver to the Clerk of the Court, within two days after the verdict or decision of the court, or such further time as the court or Judge may grant, a memorandum of the items of his cost and necessary disbursements in the action or proceeding, which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements and costs therein named have been necessarily incurred in the action or proceeding. He shall be entitled to recover the witness fees, although at the time he may not have actually paid them. *As amended, Stats. 1889, 28.*

Costs in justice's court, Sec. 3681.

1. COST BILL, WHEN MUST BE FILED. If no cost bill was filed within two days after date of order for judgment, none could afterwards be filed. *Howard v. Richard*, 2 Nev. 128; *Sholes v. Stead*, 2 Nev. 107.
2. PREVAILING PARTY. *Lapham v. Osborne*, 20 Nev. 168.

Interest and Costs Included in Judgment.

3582. SEC. 487. The Clerk shall include in the judgment entered up by him

any interest in the verdict or decision of the court or referee, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained; and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank to be left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Security for Costs.

3583. SEC. 488. When a plaintiff in an action resides out of the state, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the Clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or Judge upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

Affidavit of Surety.

3584. SEC. 489. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and householder, or freeholder, within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Action Dismissed, When.

3585. SEC. 490. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or Judge may order the action to be dismissed.

TITLE XV.

Of Motions, Orders, Notices, Service of Papers, and Miscellaneous Provisions.

Orders and Motion.

3586. SEC. 491. Every direction of a court or Judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Where Made.

3587. SEC. 492. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

Notice of Motion.

3588. SEC. 493. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district where both parties reside, five days before the time appointed for the hearing, otherwise ten days; but the court or Judge may prescribe a shorter time.

NOTICE OF MOTION WHEN REQUIRED—Right of Party to Notice of Motion. *Pratt v. Rice*, 7 Nev. 123.

Matter May Be Transferred.

3589. SEC. 494. When a notice of a motion is given, or an order to show cause is made returnable before a Judge out of court, and at the time fixed for the motion, or, on the return day of the order, the Judge is unable to hear the parties, the matter may be transferred by his order to some other Judge before whom it might originally have been brought.

Service, How Made.

J. C.

3590. SEC. 495. Written notices and other papers, when required to be served

on the party or an attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceedings to bring a party into contempt.

Sections 495 to 503, inclusive, and Sections 506 to 508, inclusive, Title XV, are made applicable to justice's courts by Section 589 of this Act.

Service of Papers, How Made.

J. C.

3591. SEC. 496. The service may be personal, by delivery to the party or his attorney, on whom the service is required to be made, or it may be as follows: First—If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, inclosed in an envelope, into the postoffice, directed to such attorney. Second—If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion, and if his residence be not known, by putting the same, inclosed in an envelope, into the postoffice, directed to such party; *provided, however*, that in all cases where the party on whom the service is to be made has no office, or does not reside at the county seat where the action or proceeding is pending, the service may be made by filing the papers or notice to be served in the County Clerk's office and the service shall be deemed complete at the expiration of ten days from the date of such filing. *As amended, Stat. 1897, 111.*

Service by Mail.

J. C.

3592. SEC. 497. Service by mail may be made, when the person making the service and the person on whom it is to be made reside at different places, between which there is a regular communication by mail.

Deposit in Postoffice.

J. C.

3593. SEC. 498. In case of service by mail, the notice or other paper shall be deposited in the postoffice, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and place of address.

When Deemed to Have Appeared.

J. C.

3594. SEC. 499. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

APPEARANCE. A general appearance not only waives defect in a writ, or summons, but gives jurisdiction over the person in cases where the writ was void. *Curtis v. McCullough, 3 Nev. 202.*

After Appearance.

J. C.

3595. SEC. 500. When a plaintiff or a defendant who has appeared resides out of the state and has no attorney in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, shall be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt.

Successive Actions.

J. C.

3596. SEC. 501. Successive actions may be maintained upon the same contract or transaction, whenever after the former action, a new cause of action arises therefrom.

Actions May Be Consolidated.

J. C.

3597. SEC. 502. Whenever two or more actions are pending at one time between the same parties, and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

Who May Bring Suit.

J. C.

3598. SEC. 503. An action may be brought by one or more persons against any other person or persons for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon an alleged obligation or liability of any nature or kind, or upon any claim for an accounting, or for any other legal or equitable relief, and also against any two or more persons for the purpose of compelling one to satisfy a debt due the other, for which plaintiff is bound as surety or otherwise. The word "person" in this section shall be deemed to include artificial as well as natural persons. *As amended, Stats. 1893, 79.*

Register of Actions.

3599. SEC. 504. The Clerk shall keep among the records of the court a register of actions. He shall enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Referees.

3600. SEC. 505. When there are three referees, or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

Time, Computation Of.

J. C.

3601. SEC. 506. The time within which an act is to be done, as provided in this Act, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

Sections 506 to 508, inclusive, made applicable to justices' courts by Section 589 of this Act.

Title of Action Not Material.

J. C.

3602. SEC. 507. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Cause of Action Arising in Another State.

J. C.

3603. SEC. 508. When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

TITLE XVI.*Of Proceedings in Civil Cases in Justices' Courts.***CHAPTER 1—OF THE PARTIES AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.****Justices' Courts—Jurisdiction.**

3604. SEC. 509. The provisions of title one of this Act, as to parties to actions, shall be applicable to actions of which a justice's court has jurisdiction. Justices' courts shall have jurisdiction of the following actions and proceedings: First—Of an action arising on contract for the recovery of money only, if the sum

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claimed, exclusive of interest, does not exceed three hundred dollars. Second—Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed three hundred dollars. Third—Of an action for a fine, penalty, or forfeiture, not exceeding three hundred dollars, given by statute or the ordinance of any incorporated or unincorporated city, town, or village. Fourth—Of an action upon a bond conditioned for the payment of money not exceeding three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due. Fifth—Of an action upon a surety bond or undertaking, though the penalty exceed, if the amount claimed does not exceed three hundred dollars. Sixth—Of an action to recover the possession of personal property, when the value of such property does not exceed three hundred dollars. Seventh—To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed three hundred dollars. Eighth—Of actions for the possession of lands and tenements, where the relation of landlord and tenant exists. Ninth—Of actions when the possession of lands or tenements has been unlawfully or fraudulently obtained or withheld, in which case the proceedings shall be as prescribed by the Acts upon that subject. Tenth—Of proceedings respecting vagrants and disorderly persons. Eleventh—Of suits for the collection of taxes, where the amount of the tax sued for does not exceed three hundred dollars. The jurisdiction conferred by this section shall not extend to a civil action in which the title to real estate or mining claims, or questions to boundaries of land, are involved, or to actions to enforce mechanics' liens; and if questions of title to real property be involved, cases involving such questions shall be disposed of as hereafter provided in this Act. The courts held by Justices of the Peace shall be denominated justices' courts. They shall have no terms, but shall always be open. Justices' courts shall be held in their respective townships, precincts, or cities.

1. JURISDICTION. Courts of Justices of the Peace, being of special and limited jurisdiction, can take nothing by intentment or implication. *Paul v. Armstrong*, 1 Nev. 82.
Consent of parties cannot give jurisdiction. *Id.*
Where a statute prescribes the mode of acquiring jurisdiction, that mode must be complied with or the proceedings will be a nullity. *Id.*
2. JURISDICTION. Courts of Justices of the Peace, being the mere creatures of statute, have no jurisdiction except that which is expressly granted to them by law. *Paul v. Beegan*, 1 Nev. 327.
3. JURISDICTION MUST BE AFFIRMATIVELY SHOWN. *Mallett v. Uncle Sam M. Co.*, 1 Nev. 188; *McDonald v. Prescott*, 2 Nev. 109.
4. JUSTICE OF THE PEACE—JURISDICTION—ACTION AGAINST COUNTY. A Justice of the Peace has jurisdiction of an action against a county for a sum less than \$300. *Floral Spring W. Co. v. Rives*, 14 Nev. 431.
5. TRANSFER OF CAUSE FROM JUSTICE'S COURT TO THE DISTRICT COURT—QUESTION OF RIGHT OF POSSESSION. Where the trial of a case, in a justice's court, involves a question of possession, and right of possession of real estate, the case should be transferred to the district court. *Tull v. Anderson*, 15 Nev. 426.
6. EQUITABLE DEFENSE. Cannot be pleaded in a justice's court. *Duffy v. Moran*, 12 Nev. 84.

Appearance in Person or by Attorney.

3605. SEC. 510. Parties in justices' courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the Constable by whom the summons or jury process was served shall not appear or act on the trial in behalf of either party.

When Person May Be Held to Answer Out of His Own Township.

3606. SEC. 511. No person shall be held to answer to any summons issued against him from a justice court, in a civil action, in any township, precinct, or city other than the one in which he resides, except in the cases following: First—When there shall be no justice court for the township, precinct, or city in which

the defendant may reside, or no Justice competent to act in the case. Second—When two or more persons jointly, or jointly and severally, bound in debt or contract, or otherwise jointly liable in the same action, and reside in different townships, precincts, or cities of the same county, or in different counties, the plaintiff may prosecute his action in a justice court of the township, precinct, or city in which any of the debtors or other persons liable may reside. Third—In case of injury to the person, or to real and personal property, the plaintiff may prosecute his action in the township, precinct, or city where the injury was committed. Fourth—When personal property unjustly taken or detained is claimed, or damages therefor are claimed, the plaintiff may bring his action in any township, precinct, or city in which the property may be found, or in which the property was taken. Fifth—When the defendant is a non-resident of the county he may be sued in any township, precinct or city, wherein he may be found. Sixth—When a person or persons has or have contracted to perform any obligation or contract at a particular place and resides or reside in another township, precinct, or city, he or they may be sued in the township, precinct, or city in which such obligation or contract is to be performed, or in which he or they reside, and for the purposes of this Act the township, precinct, or city where the goods were delivered or money loaned shall be intended to mean the place where the obligation is to be performed, and where the person or persons may be sued, at the option of the plaintiff. Seventh—When the foreclosure of a mortgage or the enforcement of a lien upon real or personal property is sought by action, the plaintiff may sue in the township, precinct, or city where the property is situated; *provided*, that in the county seat of any county, and also in every incorporated city, irrespective of the residence of the defendant, and irrespective of township or precinct lines. *As amended, Stats. 1871, 103; 1885, 123.*

SECTION 511 AND SECTION 30 TO BE CONSTRUED TOGETHER. Roy v. Whitford, 9 Nev. 370.

Judgment Upon Confession.

3607. SEC. 512. Judgment upon confession may be entered up in any justice's court in the state specified in the confession. The provisions of title ten, chapter two, of this Act shall apply to such confession, the word "Justice" being substituted for that of Clerk wherever it may occur.

Further Jurisdiction—Voluntary Appearance.

3608. SEC. 513. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences, or the place where the cause of action arose, or the subject matter of the action may exist.

CHAPTER 2—SUMMONS, ARREST, ATTACHMENT, AND CLAIM OF PERSONAL PROPERTY.

Actions, How Commenced.

3609. SEC. 514. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleadings of the parties without summons. In the latter case the action shall be deemed commenced at the time of appearance.

JUSTICE'S COURT—SUFFICIENCY OF COMPLAINT AND SUMMONS. An account was filed in the justice's court against "Irving, McKay & Co."; the summons was returned served on "the defendants," and the judgment was entered by default: *Held*, that the complaint and summons were sufficient to sustain the judgment. Martin v. District Court, 13 Nev. 85.

Guardian, How Appointed.

3610. SEC. 515. When a guardian is necessary, he shall be appointed by the Justice as follows: First—If the infant be a plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be

of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the Justice. Second—If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed; otherwise the Justice may appoint any suitable person who gives such consent.

Summons, Form Of.

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3611. SEC. 516. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name, and shall summon him to appear before the Justice at his office, naming its township, precinct, or city, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described in general terms, sufficient to apprise the defendant of the nature of the claim against him; and in an action for money or damages shall state the amount for which the plaintiff will take judgment if the defendant fail to appear and answer. It shall be subscribed by the Justice before whom it is returnable.

Time of Service and Return in Different Cases, When Complete—Justice May Appoint Attorney.

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3612. SEC. 517. The time mentioned in the summons for the appearance of the defendant and the time of service shall be as follows: First—When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately. Second—When the defendant is a non-resident of the township or city, or when the plaintiff is a non-resident, it shall be returnable not more than two days from its date and shall be served at least one day before the time for appearance, except in cases where it is to be served by publication, or out of the state, or by posting notices thereof, when it shall be made returnable at any time designated by the Justice, not less than six weeks nor more than four months from its issuance. Third—In all other cases it shall be returnable in not less than two nor more than ten days after its date, and shall be served at least two days before the time for appearance; *provided*, that in cases where an action is brought in an adjoining township, because there is no Justice in the proper township, it shall be returnable in not less than five nor more than ten days after its date. Fourth—When the person on whom the service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, or being a corporation or joint stock association, cannot be served as provided in section twenty-nine, and the fact shall appear by affidavit to the satisfaction of the Justice thereof, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such Justice may grant an order that the service be made by the publication of the summons. Fifth—The order shall direct the publication to be made in a newspaper to be designated by the Justice as most likely to give notice [to] the person to be served, for a period of six weeks, and at least once a week during said time. In case of publication, where the residence of the non-resident or absent defendant is known, the Justice shall also direct a copy of the summons and complaint to be deposited in the postoffice, postage prepaid, directed to the person or corporation to be served, at residence of such person or place of business of such corporation. When publication is ordered, personal service of a copy of the summons and complaint out of the state shall be equivalent to publication and deposit in the postoffice. The service of summons shall be deemed complete in case of publication at the expiration of six weeks from the first publication, and in case where a deposit of a copy of the summons in the postoffice is also required, at the expiration of six weeks from such deposit; in action upon contracts for the direct payment of

money, evidence by written instrument, the court may, instead of ordering publication, appoint an attorney to appear and answer for the non-resident, absent or concealed defendant, and conduct the proceedings on his part; but in such case where the residence of the defendant is known, a copy of the summons shall be deposited in the postoffice and addressed to the defendant, as in other cases, and the attorney so appointed shall not appear until the returned day named in the summons. *As amended, Stats. 1883, 33; 1885, 122.*

Summons, How Served.

3613. SEC. 518. The summons shall be served by the Sheriff or a Constable of the county, or by any male citizen of the United States over twenty-one years of age, as follows: First—If the action be against a corporation, by a delivery of a copy to the President or other head of the corporation, or to the Secretary, Cashier, or managing agent thereof, or when no such officer resides in the county, to a Director resident therein. Second—If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or guardian; or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is. Third—If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian. Fourth—In all other cases, by delivery of the copy to the defendant personally.

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Sections Applicable to Justices' Courts.

3614. SEC. 519. Sections thirty to thirty-five, both inclusive, of title three of this Act, are hereby made applicable to justices' courts, and proceedings therein—the word "Justice" being inserted wherever the word "Clerk" or "Judge" occurs, and the word "Constable" inserted wherever the word "Sheriff" occurs, and the word "complaint," whenever it occurs, being stricken out and disregarded; *provided*, that in actions upon contracts for the payment of money, the Justice may, in his discretion, instead of ordering publication of summons or the appointment of an attorney to appear for the defendant, order the service of the summons to be made by posting copies thereof in three public places in the township, within one day after the same is issued.

Order of Arrest Indorsed on Summons, When.

3615. SEC. 520. An order to arrest the defendant may be indorsed on a summons issued by the Justice, and the defendant may be arrested thereon by the Sheriff or Constable at the time of serving the summons, and brought before the Justice, and there detained until duly discharged in the following cases, arising after the passage of this Act: First—In an action for the recovery of money or damages on a cause of action arising upon a contract, express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors; or where the action is for the willful injury to the person, or for taking, detaining, or injuring personal property. Second—In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third—When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth—When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

Undertaking Given Before Arrest Ordered.

3616. SEC. 521. Before an order of arrest shall be made, the party applying shall prove to the satisfaction of the Justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the Justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay

to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Taken Before Another Justice, When.

3617. SEC. 522. The defendant, immediately upon being arrested, shall be taken to the office of the Justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of defendant that he is a material witness in the action, the officer shall immediately take the defendant before the next Justice of the city, precinct, or township, who shall take cognizance of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

Duty of Officers Making Arrest.

3618. SEC. 523. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Kept in Custody.

3619. SEC. 524. The officer making an arrest shall keep the defendant in custody until duly discharged by order of the Justice.

Immediate Trial—Adjournment Operates as Discharge, When.

3620. SEC. 525. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest; but the action may proceed notwithstanding, and the defendant shall be subject to arrest on the execution in the same manner as if he had not been so discharged.

Defendant May Obtain Adjournment.

3621. SEC. 526. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the Justice an undertaking, with two or more sufficient sureties, to be approved by the Justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued, to enforce the judgment therein, or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the Justice shall order the defendant to be discharged from custody.

Sections Applicable to Justices' Courts—Attachment, etc.

3622. SEC. 527. The following sections of chapter one, title five, of this Act, shall be applicable to justices' courts and proceedings therein, to wit: Eighty to eighty-five, both inclusive, and the following of chapter two, same title, to wit: Ninety-nine to one hundred and two, both inclusive; one hundred and four and one hundred and seven to one hundred and ten, both inclusive, the word "Justice" being inserted in lieu of the word "Clerk" or "Judge" wherever either occurs. and the word "Constable" in lieu of the word "Sheriff"; also section one hundred and twenty-three to one hundred and forty-four, both inclusive, the word "Justice" being inserted in lieu of the word "Clerk" or "Judge" wherever either occurs: *provided*, that the writ of attachment shall be directed to the Sheriff or any Constable of the county, and may be executed by the Sheriff or any Constable of the county wherein issued in any part of such county; *and, provided further*, that when any personal property shall be attached by a Constable, which shall, at the time, be held under attachment or execution by the Sheriff or another Constable of the same county, such last attaching Constable shall give to the officer pre-

viciously seizing such property the same notice required in case of garnishments, and such officer shall, if the attachment or execution under which such property was first taken by him be set aside or satisfied, without sale of such property, turn the same over to the Constable who gave the notice, and if such property be sold by the officer first taking the same under legal process, and sell for more than sufficient to satisfy the demands of such process, or less than the whole thereof be sold to satisfy such process, the officer selling shall deliver the excess of proceeds, or surplus of property, as the case may be, and to the extent necessary, to the Constable giving such notice, and the foregoing provisions shall apply to levy under execution the same as to seizure under attachment. *As amended, Stats. 1883, 49.*

CHAPTER 3—PLEADINGS AND TRIAL.

Pleadings Defined.

3623. SEC. 528. The pleadings in justice's courts shall be: First—The complaint by the plaintiff, stating the cause of action. Second—The answer by the defendant, stating the ground of the defense.

Pleading Verified, When.

3624. SEC. 529. The pleadings shall be in writing, and verified by the oath of the party, his agent or attorney, when the action is: First—For the foreclosure of any mortgage or the enforcement of any lien on real or personal property. Second—Of actions for the possession of lands or tenements.

Oral to Be Entered, Written to Be Filed.

3625. SEC. 530. When the pleadings are oral, the substance of them shall be entered by the Justice in his docket; when in writing, they shall be filed in his office, and a reference made to them in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Complaint.

3626. SEC. 531. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

Answer.

3627. SEC. 532. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or a counterclaim upon which an action may be brought by the defendant against the plaintiff in a justice's court.

What Deemed Denial.

3628. SEC. 533. A statement in answer, that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

Cause for Payment of Money—Account Delivered.

3629. SEC. 534. When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereupon from the adverse party a specified sum which he claims to recover or set off. The court may at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished, or if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

Signatures to Instruments Admitted, When.

3630. SEC. 535. If the plaintiff annex to his complaint, or file with the Justice at the time of issuing the summons, a copy of the promissory note, bill of

exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

Objections to Pleadings—Amendment.

3631. SEC. 536. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Variance Disregarded.

3632. SEC. 537. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Amendments—Adjournment—Court May Order Payment of Costs.

3633. SEC. 538. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment, nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

Certification of Cause to District Court, When and How.

3634. SEC. 539. The parties shall not be at liberty to give evidence upon any question which involves the title to, or the right of possession to, or the possession of, real property or mining claims, or upon any question involving boundaries to land, or the legality of any tax, impost, assessment, toll, or municipal fine, nor shall any issue presenting such question be tried by the Justice; and if it appear from the plaintiff's own showing, on the trial, or from the answer of the defendant, verified by his oath, that the determination of the action will necessarily involve either of such questions, the Justice shall suspend all further proceedings in the action, and certify the pleadings, or if the pleadings be oral, a transcript of the same, from his docket to the district court for the county; and from the time of filing such pleadings or transcript with the Clerk of the District Court, such district court shall have over the action the same jurisdiction as if it were originally commenced therein.

JURISDICTION OF MALICIOUS MISCHIEF. Justices of the Peace have jurisdiction to try an action for malicious injury to real estate in cases where the defendant claims an adverse title to the property. *Murphy v. Rising*, 10 Nev. 97; *Tull v. Anderson*, 15 Nev. 425.

Change of Venue, When—Proceedings.

3635. SEC. 540. If at any time before the trial it appear to the satisfaction of the Justice before whom the action is brought, by affidavit of either party, that such Justice is a material witness for either party, or if either party make affidavit that he has reason to believe and does believe that he cannot have a fair and impartial trial before such Justice, by reason of the interest, prejudice, or bias of the Justice, on stating the facts upon which such belief is founded, the action shall be transferred to some other Justice of the same or neighboring township or precinct; and in case a jury be demanded, and affidavit of either party is made that he cannot have a fair and impartial trial, on account of the bias or prejudice of the

citizens of the township or precinct against him, the action shall be transferred to some other Justice of the Peace in the county, but only one transfer shall be allowed to either party. The Justice to whom an action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The Justice ordering the transfer of the action to another Justice shall immediately transmit to the latter, on payment by the applicant of all Justices' and officers' costs unpaid and due from him, and the costs of making a copy of the docket for transmission, all the papers in the action, together with a certified transcript from his docket of the proceedings therein; *provided*, that if the applicant shall fail to pay said costs for the space of one hour, the Judge shall vacate the order changing the place of trial and proceed to try the cause as though such order had never been made. The Justice to whom the case is transferred shall issue a notice stating the time and place, when and where the trial will take place; which notice shall be served upon the parties by any officer authorized to serve process in a justices' court, or by any person specially appointed by the Justice for that purpose, at least one day before the trial.

Adjournment of Trial—Proceedings.

3636. SEC. 541. The trial may be adjourned by consent or upon application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows: First—The party asking the adjournment shall, if required by his adversary, prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial; and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so. Second—That the party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance, be then taken by deposition before the Justice, which shall accordingly be done, and testimony so taken may be read on the trial, with the same effect and subject to the same objections as if the witness were produced. But such objections shall be made at the time of taking the deposition. Third—The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Extent of Adjournment—What to Be Shown.

3637. SEC. 542. An adjournment may be had either at the time of joining issue or at any subsequent time to which the case may stand adjourned, on application of either party, for a longer period than ten days, but not to exceed four months from the time of the return day of the summons, upon proof, by the oath of the party or otherwise, to the satisfaction of the Justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by an act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him; *provided*, that if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered or overruled as improper, the adjournment shall not be had.

Undertaking for Adjournment Over Ten Days.

3638. SEC. 543. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, with sureties, to be approved by the Justice, to the effect that they will pay to the opposite party the amount of any judgment that

may be recovered against the party applying, in the money or currency claimed in the pleading of the plaintiff.

When Dismissed.

3639. SEC. 544. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

Jury, When Demanded—How Formed.

3640. SEC. 545. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time and place shall be determined by the Justice, and shall be on the same day, or within the next two days. The jury shall be summoned upon an order of the Justice, from the citizens of the city, precinct, or township, and not from the bystanders.

Number of Jurors.

3641. SEC. 546. At the time appointed for the trial the Justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number, not more than twelve nor less than four.

Additional Jurors.

3642. SEC. 547. If a sufficient number of competent and indifferent jurors do not attend, the Justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

Challenging—How Tried.

3643. SEC. 548. Either party may challenge the jurors. The challenges shall be either peremptory or for cause. Each party shall be entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth in section one hundred and sixty-four. Challenges for cause shall be tried by the Justice in a summary manner, who may examine the juror challenged, and witnesses.

CHAPTER 4—JUDGMENT AND EXECUTION.

Dismissal, When Granted.

3644. SEC. 549. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases: First—When the plaintiff voluntarily dismisses the action before it is finally submitted. Second—When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter. Third—When it is objected at the trial and appears by the evidence that the action is brought in the wrong county, township, city, or precinct; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

By Default.

3645. SEC. 550. When the defendant fails to appear and answer, judgment shall be given for the plaintiff as follows: First—When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the Justice at the time the summons was issued, judgment shall be given without further evidence, for the sum specified in the summons. Second—In other cases, the Justice shall hear the evidence of the plaintiff, and render judgment for such

sum only as shall appear by the evidence to be just, but in no case exceeding the amount specified in the summons.

Jury Not Demanded.

3646. SEC. 551. Upon issue joined, if a jury trial be not demanded, the Justice shall hear the evidence and decide all questions of fact and of law, and render judgment accordingly.

Judgment, How and When Entered.

3647. SEC. 552. Upon a verdict the Justice shall immediately render judgment accordingly. When the trial is by the Justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody. In other cases it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served or have voluntarily appeared, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the individual property of the defendants served or who have voluntarily appeared in the action. In an action on a contract or obligation for the direct payment of money, made payable in a specified or agreed kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict or decision of the court, shall follow the contract or obligation, and be made payable in the kind of money or currency specified therein or agreed thereby.

Exceeds Jurisdiction.

3648. SEC. 553. When the amount found due to either party exceeds the sum for which the Justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

JUSTICE SHOULD ENTER UP JUDGMENT IMMEDIATELY ON THE RENDITION OF VERDICT. But if he omits to do so the day the verdict is rendered, still he may complete his record by afterwards entering the judgment. *Fugitt v. Cox*, 2 Nev. 370.

The filing of a notice of appeal and undertaking on appeal in a justice's court, after the rendition of a verdict by the jury, but before the entry of judgment thereon, does not deprive the Justice of authority to enter up judgment on the verdict. *Id.*

Offer of Allowance of Judgment.

3649. SEC. 554. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and, if he recover, deduct from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

Subject to Arrest.

3650. SEC. 555. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment and entered in the docket.

Costs to Be Added.

3651. SEC. 556. When the prevailing party is entitled to costs by this chapter, the Justice shall add their amount to the verdict, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of defendant for the amount of such costs.

Transcript of Judgment—Process on—Lien.

3652. SEC. 557. The Justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and

docketed in the office of the Clerk of the district court for the county where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted by him thereon and entered in the docket, and from that time executions may be issued by the Clerk on such judgments, to the Sheriff of any other county of the state, in the same manner as upon judgments recovered in the higher courts. All process upon judgments recovered in justices' courts, to be executed within the same county, shall be issued by the Justice or his successors in office. No judgment rendered by a Justice of the Peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment, certified by the Justice, be filed and recorded in the office of the County Recorder. When such transcript is to be filed in any other county than that in which the Justice resides, such transcript shall be accompanied with a certificate of the County Clerk as to the official character of the Justice. When so filed and recorded in the office of the Recorder for any county, such judgment shall constitute a lien upon and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded in favor of such judgment creditor, as if such judgment had been rendered in the district court for such county.

Execution May Issue.

3653. SEC. 558. Execution for the enforcement of a judgment in a justice's court may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Form of Execution.

3654. SEC. 559. The execution, when issued by a Justice, shall be directed to the Sheriff or to a Constable of the county, and subscribed by the Justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the Justice before whom, and of the county and the township or city where, and the time when it was rendered, the amount of judgment, if it be for money, and the kind of money or currency in which it is payable, and if less than the whole is due, the true amount due thereon. It shall contain, in like cases, similar directions to the Sheriff or Constable as are required by the provisions of title seven of this Act, in an execution to the Sheriff.

Execution, How Executed—Sections Applicable—Proviso.

3655. SEC. 560. The Sheriff or Constable to whom the execution is directed shall proceed to execute the same in the same manner as the Sheriff is required by the provisions of title seven of this Act to proceed upon executions directed to him; and the Constable, when the execution is directed to him, shall be vested, for that purpose, with all the powers of the Sheriff. And sections two hundred and fourteen, two hundred and fifteen, and from two hundred and seventeen to two hundred and thirty-six, both inclusive, and two hundred and thirty-eight and two hundred and thirty-nine of chapter one, said title, and chapter two of the same title, are hereby made applicable to justices' courts and proceedings therein, the word "Justice" being inserted in lieu of the words "Judge" and "Clerk," whenever they occur; and a Constable to whom, and his successor in office, the writ is given, shall have all the powers and be subject to all the duties and liabilities therein given to or imposed upon the Sheriff; *provided*, that the words "in an amount exceeding fifty dollars," in section two hundred and forty-three, shall be deemed omitted; *provided further*, that sales of real property shall be made at or upon the property sold.

CHAPTER 5—GENERAL PROVISIONS.

Applicable to Justices' Courts.

3656. SEC. 561. Those provisions of this Act which are referred to in this title, and no other, shall, in addition to the provisions embraced in this title, be applicable to justices' courts and proceedings therein.

Docket, How Kept.

3657. SEC. 562. Every Justice shall keep a book denominated a "docket," in which he shall enter: First—The title of every action or proceeding. Second—The object of the action or proceeding; and if a sum of money be claimed, the amount of the demand. Third—The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth—The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading, and of all motions made during the trial by either party, and his decisions thereon. Fifth—Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time. Sixth—The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury. Seventh—The names of the jury who appear and are sworn; the names of all witnesses sworn, and at whose request. Eighth—The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth—The judgment of the court, specifying the costs included, and the time when rendered. Tenth—The issuing of execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the Justice, and when and by whom. Eleventh—The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, and of the making and delivery of a transcript of his judgment or docket.

JUSTICE'S DOCKET—ENTRY OF SERVICE OF SUMMONS. The docket of a Justice of the Peace is only primary evidence of those facts which it is required to contain, and it is not required to contain any finding that summons has been served; but only the date of the summons and the time of its return. (Practice Act, Sec. 562.) *Scorpion S. M. Co. v. Marsano*, 10 Nev. 370.

Entries in Docket to Be Evidence.

3658. SEC. 563. The several particulars of the last section specified shall be entered under the title of the action to which they relate, and at the time when they occur. Such entries in a Justice's docket, or a transcript thereof, certified by the Justice or his successor in office, shall be primary evidence to prove the facts so stated therein.

Index to Docket Kept.

3659. SEC. 564. A Justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names.

Deposited With Successor.

3660. SEC. 565. It shall be the duty of every Justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to keep as public records. If the office of a Justice become vacant by his death or removal from the township, precinct, or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such Justice shall be deposited with the County Clerk of the county, to be by him delivered to the successor in office of the Justice.

Succeeding Justice May Issue Execution.

3661. SEC. 566. Any Justice with whom the docket of his predecessors is deposited, may issue execution or other process, upon a judgment there entered and unsatisfied in the same manner and with the same effect as the Justice by whom the judgment was entered might have done. In case of the creation of a new county or the change of the boundary between two counties, any Justice into

Appeal, How Taken.

3676. SEC. 581. Any party dissatisfied with a judgment rendered in a justice court, may appeal therefrom to the district court for the county any time within thirty days after the rendering of judgment. The appeal shall be taken by filing a notice with the Justice, and serving a copy on the adverse party.

JURISDICTION ON APPEAL FROM JUSTICE'S COURT—JUDGMENT BY DEFAULT. No appeal lies from a judgment rendered by default in a justice's court. The district court can only retry issues of law or fact that were made in the justice's court. *Martin v. District Court*, 13 Nev. 86.

Causes Tried Anew—Costs Recovered, When.

3677. SEC. 582. All causes appealed to the district court shall be tried anew in said court, and said court may regulate by rule the practice in such cases in all respects not provided for by statute; *provided*, that the appellant shall in no case recover from respondent the cost incurred on appeal, unless he recover in the district court a judgment more favorable to himself than the judgment appealed from; but shall, unless he recover in the district court a judgment more favorable to himself than the judgment appealed from, pay the costs of respondent on appeal; and if such judgment be a money judgment in favor of appellant, and of sufficient amount to cover respondent's costs, such costs shall be deducted from said judgment; and in all other cases respondent shall have judgment against the appellant for the amount of the costs so incurred; *provided*, that whenever the Judge of the appellate court shall be satisfied from the evidence that the appellant had reasonable grounds for his appeal, and that such appeal was taken in good faith, for the sole purpose of promoting the ends of justice, such Judge may then order such costs to be taxed against the respondent, or may apportion the costs between the parties in such manner as will be just. *As amended, Stats. 1873, 101.*

Appeal, How Perfected.

3678. SEC. 583. Upon receiving the notice of appeal, and on payment of the fees of the Justice and filing an undertaking, as required in the next section, the Justice shall, within five days, securely attach to a certified copy of his docket all the papers filed in the cause, together with the notice of appeal and undertaking filed, and transmit the same to the Clerk of the District Court. The certified copy of the docket, the papers, notice and undertaking, attached together as aforesaid, shall be the transcript on appeal, and the Clerk of the District Court shall file such transcript on payment of the fees therefor. The Justice may be compelled by the district court by an order entered on motion to transmit such transcript to said Clerk, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice by the party or his attorney. In the district court either party shall have the benefit of all legal objections made in the justice's court. *As amended, Stats. 1881, 40.*

1. SECTION 583, CIVIL PRACTICE ACT, CONSTRUED. *Mayberry v. Bowker*, 14 Nev. 336.

2. JURISDICTION OF DISTRICT COURT ON APPEAL FROM JUSTICE'S COURT. A district court on appeal has exactly the same jurisdiction as the Justice of the Peace from whose court the appeal is taken. *Peacock v. Leonard*, 8 Nev. 84.

JUDGMENT ON APPEAL FROM JUSTICE FOR FORCIBLE ENTRY ANNULLED. As a Justice of the Peace has no jurisdiction of an action of forcible entry, a district court has no jurisdiction thereof on appeal; and its proceedings and judgment to the contrary will be annulled on certiorari. *Id.*

3. APPEAL FROM JUSTICE'S COURT—EFFECT OF DISMISSAL. *Barnett v. District Court*, 18 Nev. 26.

Undertaking on Appeal Amount of Deposit in Lieu.

3679. SEC. 584. An appeal from a justice's court shall not be effectual for any purpose unless an undertaking be filed, within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, in gold coin of the United States, for the payment of the costs on the appeal, or if a stay

of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the district court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or will pay the amount of any judgment and costs which may be recovered against him in said action in the district court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavits of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking; and unless they and other sureties justify before the Justice from whose court the appeal is taken, within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of judgment appealed from, including all costs, or of the value of the property, and all costs, in actions for the recovery of specific personal property, with the Justice, shall be equivalent to the filing of the undertaking in this section mentioned; and in such cases the Justice shall transmit the money to the Clerk of the District Court, to be by him paid out on the order of the court; and all such undertakings shall be made payable in the currency in which the judgment appealed from is payable.

Stay of Proceedings.

3680. SEC. 585. If an execution be issued on the filing of the undertaking, staying all proceedings, the Justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Claim to Be Filled.

3681. SEC. 586. Costs and necessary disbursements in the action shall be allowed to the prevailing party in a justice court. The party in whose favor a judgment is rendered, and who claims his costs, shall file with the Justice, within two days after the verdict or decision of the court, or, such further time as the Justice may grant, a memorandum of the items of his cost and necessary disbursements in the action or proceeding, which shall be verified as prescribed in section four hundred and eighty-six. He shall be entitled to recover the witness fees, although at the time he may not have actually paid them. *As amended, Stats. 1889, 28.*

Justices to Receive Money and Pay Over.

3682. SEC. 587. Justices of the Peace shall receive from the Sheriff or Constables of their county all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them, without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

Security or Deposit.

3683. SEC. 588. Justices of the Peace may require of the plaintiff a deposit

of money or an undertaking as security for all costs before issuing a summons. *As amended, Stats. 1893, 17.*

Sections Applicable to Justice Court.

3684. SEC. 589. The provisions of chapter one, title ten, sections four hundred and ninety-five to five hundred and three, both inclusive, and five hundred and six to five hundred and eight, both inclusive, title fifteen of this Act, and the miscellaneous provisions of title eighteen, shall be applicable to justices' courts and actions therein, the word "Justice" being deemed inserted in lieu of the word "Clerk," wherever it occurs.

TITLE XVIII.

Title XVIII is made applicable to justices' courts by Section 589 of this Act.

Miscellaneous Provisions.

Rules, When in Force.

3685. SEC. 590. The supreme court may make rules not inconsistent with the constitution and laws of the state, for its own government and the government of the district courts; but such rules shall not be in force until thirty days after their adoption and publication.

1. **RULES OF THE SUPREME COURT.** Should be regarded and held to be as binding and obligatory upon litigants as any other rule of civil conduct. *Lightle v. Ivancovich, 10 Nev. 41.*
- MOTION TO REINSTATE APPEAL.** Upon a motion made under Rule III of this court to reinstate an appeal which had been dismissed for failure to file the transcript within the time prescribed by Rule II, appellant must show by affidavit that he used due diligence to procure the transcript on appeal; that the appeal was taken in good faith, and that in the opinion of his counsel there are substantial errors in the record which ought to be corrected by the supreme court. *Id.*
2. **RULES OF COURT—EFFECT OF.** The rules adopted by the district court and by the supreme court, were intended to be supplemental to the provisions of the statute as rules for the government of all proceedings in the district court, and have the same force and effect as if they were incorporated in their statutory provisions. *Haley v. Eureka Co. Bank, 20 Nev. 410.*
3. **RULE TO BE CONSIDERED ON APPEAL MUST BE EMBODIED IN STATEMENT.** *Marshall v. Golden Fleece M. Co., 16 Nev. 156.*
4. **DISCRETION OF COURTS AS TO THEIR RULES.** Courts have a reasonable discretion in allowing or not allowing the requirements of their rules to be waived. *Caples v. C. P. R. Co., 6 Nev. 265.*
- APPELLATE COURT WILL NOT INTERFERE WITH PROPER RULES.** *Id.*

Actions Against Sheriffs, etc.

J. C.

3686. SEC. 591. If an action be brought against a Sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties, and the court or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SECTION 591 OF CIVIL PRACTICE ACT CONSTRUED—SURETIES—BOND OF INDEMNITY. In construing the provisions of Section 591 of the Civil Practice Act: *Held*, that the provisions of said section could only be invoked by the Sheriff; that an order substituting the sureties as defendants in place of the Sheriff was utterly null and void. *Gaudette v. Roeder, 13 Nev. 341.*

Application of Terms Used.

J. C.

3687. SEC. 592. Words used in this Act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness; the words "real estate," or "real property," to include

mining claims. Whenever the word "territory" shall be used, it shall be held to include and apply to the District of Columbia.

Affidavit of Sureties.

J. C.

3688. SEC. 593. In all cases where an undertaking with sureties is required by the provisions of said Act, the Judge, Justice, or Clerk, or other officer taking the same, shall, unless it is otherwise provided in said Act, require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; *provided*, that when the amount specified in an undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Certiorari and Mandamus, When May Issue.

3689. SEC. 594. Writs of certiorari and mandamus may be issued in the cases prescribed by said Act, by a Judge of the supreme court or district court in vacations, and may, in the discretion of the Judge issuing the writ, be made returnable and a hearing may be had on the return thereof in vacation.

Writ of Attachment.

J. C.

3690. SEC. 595. Whenever property has been taken by an officer under a writ of attachment, in pursuance of the provisions of said Act, and it shall be made to appear satisfactorily to the court, or a Judge thereof, that the interests of the parties to the action will be sustained by the sale thereof, the court, or Judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action.

Document in Hands of Public Officer as Evidence.

J. C.

3691. SEC. 596. A copy of any record, document, or paper in the custody of a public officer of this state, or of the United States, within this state, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in any action or proceeding in the courts of this state, in like manner and with the like effect as the original could be if produced.

Copartners, Actions Against.

J. C.

3692. SEC. 597. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such case shall bind only the joint property of the associates. *Same - Sec 388 C.C.P. of California*

Substitution, When May Be Made.

J. C.

3693. SEC. 598. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

Intervention, When Made.

J. C.

3694. SEC. 599. Any person shall be entitled to intervene in an action who

of money or an undertaking as security for all costs before issuing a summons. *As amended, Stats. 1893, 17.*

Sections Applicable to Justice Court.

3684. SEC. 589. The provisions of chapter one, title ten, sections four hundred and ninety-five to five hundred and three, both inclusive, and five hundred and six to five hundred and eight, both inclusive, title fifteen of this Act, and the miscellaneous provisions of title eighteen, shall be applicable to justices' courts and actions therein, the word "Justice" being deemed inserted in lieu of the word "Clerk," wherever it occurs.

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Miscellaneous Provisions.

Rules, When in Force.

3685. SEC. 590. The supreme court may make rules not inconsistent with the constitution and laws of the state, for its own government and the government of the district courts; but such rules shall not be in force until thirty days after their adoption and publication.

1. **RULES OF THE SUPREME COURT.** Should be regarded and held to be as binding and obligatory upon litigants as any other rule of civil conduct. *Lightle v. Ivancovich, 10 Nev. 41.*
- MOTION TO REINSTATE APPEAL.** Upon a motion made under Rule III of this court to reinstate an appeal which had been dismissed for failure to file the transcript within the time prescribed by Rule II, appellant must show by affidavit that he used due diligence to procure the transcript on appeal; that the appeal was taken in good faith, and that in the opinion of his counsel there are substantial errors in the record which ought to be corrected by the supreme court. *Id.*
2. **RULES OF COURT—EFFECT OF.** The rules adopted by the district court and by the supreme court, were intended to be supplemental to the provisions of the statute as rules for the government of all proceedings in the district court, and have the same force and effect as if they were incorporated in their statutory provisions. *Haley v. Eureka Co. Bank, 20 Nev. 410.*
3. **RULE TO BE CONSIDERED ON APPEAL MUST BE EMBODIED IN STATEMENT.** *Marshall v. Golden Fleece M. Co., 16 Nev. 156.*
4. **DISCRETION OF COURTS AS TO THEIR RULES.** Courts have a reasonable discretion in allowing or not allowing the requirements of their rules to be waived. *Caples v. C. P. R. Co., 6 Nev. 265.*

APPELLATE COURT WILL NOT INTERFERE WITH PROPER RULES. *Id.*

Actions Against Sheriffs, etc.

J. C.

3686. SEC. 591. If an action be brought against a Sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties, and the court or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SECTION 591 OF CIVIL PRACTICE ACT CONSTRUED—SURETIES—BOND OF INDEMNITY. In construing the provisions of Section 591 of the Civil Practice Act: *Held*, that the provisions of said section could only be invoked by the Sheriff; that an order substituting the sureties as defendants in place of the Sheriff was utterly null and void. *Gaudette v. Roeder, 13 Nev. 341.*

Application of Terms Used.

J. C.

3687. SEC. 592. Words used in this Act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness; the words "real estate," or "real property," to include

mining claims. Whenever the word "territory" shall be used, it shall be held to include and apply to the District of Columbia.

Affidavit of Sureties.

J. C.

3688. SEC. 593. In all cases where an undertaking with sureties is required by the provisions of said Act, the Judge, Justice, or Clerk, or other officer taking the same, shall, unless it is otherwise provided in said Act, require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; *provided*, that when the amount specified in an undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Certiorari and Mandamus, When May Issue.

3689. SEC. 594. Writs of certiorari and mandamus may be issued in the cases prescribed by said Act, by a Judge of the supreme court or district court in vacations, and may, in the discretion of the Judge issuing the writ, be made returnable and a hearing may be had on the return thereof in vacation.

Writ of Attachment.

J. C.

3690. SEC. 595. Whenever property has been taken by an officer under a writ of attachment, in pursuance of the provisions of said Act, and it shall be made to appear satisfactorily to the court, or a Judge thereof, that the interests of the parties to the action will be sustained by the sale thereof, the court, or Judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court to abide the judgment in the action. Such order shall be made only upon notice to the adverse party, or his attorney, in case such party has been personally served with a summons in the action.

Document in Hands of Public Officer as Evidence.

J. C.

3691. SEC. 596. A copy of any record, document, or paper in the custody of a public officer of this state, or of the United States, within this state, certified under the official seal, or verified by the oath of such officer to be a true, full, and correct copy of the original in his custody, may be read in evidence in any action or proceeding in the courts of this state, in like manner and with the like effect as the original could be if produced.

Copartners, Actions Against.

J. C.

3692. SEC. 597. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates, but the judgment in such case shall bind only the joint property of the associates.

*Same -
Sec
388
C.C.P. of
California*

Substitution, When May Be Made.

J. C.

3693. SEC. 598. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon due notice to such person, and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

Intervention, When Made.

J. C.

3694. SEC. 599. Any person shall be entitled to intervene in an action who

has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

1. INTEREST OF INTERVENOR IN SUIT. To entitle a person to intervene, he must have such an interest in the matter in litigation that he would either gain or lose by the direct legal operation and effect of the judgment which might be rendered in the suit between the original parties. *Harlan v. Eureka M. Co.*, 10 Nev. 92.
2. RIGHTS OF INTERVENOR—Answer—Relief Granted. *Marshall v. G. F. M. Co.*, 16 Nev. 156.
3. NOTICE AND FILING OF CLAIM—NATURE AND EFFECT. The service of notices, and the filing of a preferred claim is in the nature of a petition in intervention, and if either the debtor or the creditor serve written objections thereto, it becomes the duty of the claimant, within ten days, to commence an action in a court of competent jurisdiction to establish his claim. *Alexander v. Archer*, 21 Nev. 22.

Intervention, When May Be Made.

J. C.

3695. SEC. 600. A third person may intervene either before or after issue has been joined in the cause.

Petition of Intervention.

J. C.

3696. SEC. 601. The intervention shall be by petition or complaint filed in the court in which the action is pending, and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the party or parties to action against whom anything is demanded, who shall answer it as if it were an original complaint in the action.

OBJECTIONS TO INSUFFICIENCY OF PETITION. Where there is no statement of any fact which entitles petitioner to intervene, the petition must be treated the same as a complaint which fails to state facts sufficient to constitute a cause of action; hence an objection to its sufficiency can be taken at any time. *Harlan v. Eureka M. Co.*, 10 Nev. 92.

Court to Determine on Intervention.

J. C.

3697. SEC. 602. The court shall determine upon the intervention at the same time that the action is decided; if the claim of the party intervening is not sustained he shall pay all costs incurred by the intervention.

Discovery.

J. C.

3698. SEC. 603. No action to obtain a discovery under oath, in aid of the prosecution or defense of another action or proceeding, shall be allowed.

Justification of Sureties.

J. C.

3699. SEC. 604. In all cases not otherwise provided for in this Act, where sureties are required to justify, they shall appear before the officer or person authorized to take the justification, and may be examined under oath by such officer or person and the adverse party, touching their qualifications as sureties, which examination shall be reduced to writing and subscribed by the sureties if required. If, upon such examination, it shall appear to such officer or person that said sureties, or either of them, have the necessary qualifications of such, he shall so indorse upon the statement, and cause the same to be filed, and thereupon the justification shall be complete.

Public Debt.

3700. SEC. 605. Nothing in this Act shall be construed to interfere with or affect any of the provisions of an Act entitled "An Act to establish the financial transactions of this state upon a coin basis," approved February second, eighteen hundred and sixty-nine; but the public debts therein mentioned shall be paid in the currency prescribed by said Act.

Acts Repealed.

3701. SEC. 606. An Act of the legislature of the late Territory of Nevada.

entitled "An Act to regulate proceedings in civil cases in the courts of justice of the Territory of Nevada," passed November twenty-ninth, eighteen hundred and sixty-one; and an Act of said legislature entitled "An Act to amend an Act to regulate proceedings in the courts of justice in this territory," passed February twentieth, eighteen hundred and sixty-four; and all Acts and parts of Acts amendatory of or supplementary to said Act of November twenty-ninth, eighteen hundred and sixty-one, and "An Act to regulate the civil jurisdiction and practice in justices' courts, and to consolidate into one Act former provisions on the subject," approved February twenty-sixth, eighteen hundred and sixty-six, and all Acts and parts of Acts in conflict with this Act, are hereby repealed, but such repeal shall not invalidate any judgment rendered, or order made, or any proceedings already taken by virtue of said Acts or parts of Acts.

An Act to provide for an alias summons.

Approved February 23, 1899, 26.

Alias Summons.

3702. SECTION 1. Whenever any summons shall be returned not executed as to any defendant, the plaintiff shall be entitled to another summons, *toties quoties*, against such defendant, if he shall require it, until due service shall be made.

under N. 318- Sec. 1907

An Act defining the time of commencing civil actions.

Approved November 21, 1861, 26.

When May Be Commenced.

3703. SECTION 1. Civil actions can only be commenced within the periods prescribed in this Act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

1. **DELINQUENT TAXES.** The statute of limitation applies to suits brought by the state for the collection of delinquent taxes. *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220.

2. **EQUITABLE ACTIONS.** Statute of limitations embraces equitable as well as legal actions and is obligatory upon the courts in both. *White v. Sheldon*, 4 Nev. 280.

STATUTE OF LIMITATIONS AS TO TRUSTS—Actions Against Trustees. *Id.*

3. **EQUITY—FRAUD.** *Lang Syne M. Co. v. Ross*, 20 Nev. 127.

4. **MISTAKE IN DEED—Confidential Relations—Laches.** *Wilson v. Wilson*, 23 Nev. 267.

Entitled to Whole Period.

3704. SEC. 2. When the cause of action has already accrued, the party entitled, and those claiming under him, shall have, after the passage of this Act, the whole period herein prescribed, in which to commence an action.

State Not to Sue, When.

3705. SEC. 3. The State of Nevada will not sue any person for, or in respect to, any real property, or the issues or profits thereof, by reason of the right or title of the state to the same, unless: First, such right or title shall have accrued within ten years before any action or other proceeding for the same; or, unless, second, the state, or those from whom it claims, shall have received the rents and profits of such real property, or of some part thereof within the space of ten years. *As amended, Stats. 1867, 85.*

Action for Recovery of Mining Claims—Meaning of Terms.

3706. SEC. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, or those through or from whom he claims, were seized or possessed of such mining claim, or were the owners thereof, according to the laws and customs of the district embracing the same, within two years before the commencement of such action. Occupation and adverse possession of a mining claim shall consist in holding and working the same, in the usual and customary mode of holding

and working similar claims in the vicinity thereof. All the provisions of this Act, which apply to other real estate, so far as applicable, shall be deemed to include and apply to mining claims; *provided*, that in such application "two years" shall be held to be the period intended whenever the term "five years" is used; *and, provided further*, that when the terms "legal title" or "title" are used, they shall be held to include title acquired by location or occupation, according to the usages, laws, and customs of the district embracing the claim. *As amended, Stats. 1867, 85.*

1. STATUTE OF LIMITATIONS AS TO MINING CLAIMS. Does not conflict with United States statutes. *Four-Twenty M. Co. v. Bullion M. Co.*, 9 Nev. 240.
2. MINING GROUND, TITLE BY PATENT, STATUTE OF LIMITATIONS. The statute of limitations does not begin to run against a person entitled to the legal title to mining ground until the patent is issued to him. *South End M. Co. v. Tinney*, 22 Nev. 221.
3. STATUTE OF LIMITATIONS—POSSESSION OF TENANT IN COMMON—WHEN ADVERSE—NOTICE. To make the possession of one tenant in common adverse as against the others, it is not necessary that notice should be given of the adverse intent; but the intent must be manifested by outward acts of an unequivocal kind. *Abernathie v. Con. Va. M. Co.*, 16 Nev. 261.

Limitation for Recovery of Real Property.

3707. SEC. 5. No cause of action, or defense to an action, founded upon the title to real property, or to rents, or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within five years before the committing of the act in respect to which said action is prosecuted or defense made. *As amended, Stats. 1867, 85.*

Peaceable Entry Not Valid as Claim.

3708. SEC. 6. No peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession within one year from the making of such entry, or within five years from the time when the right to bring such action accrued. *As amended Stats. 1867, 85.*

Establishing Legal Title—Adverse Possession.

3709. SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it shall appear: First—That it has been protected by a substantial inclosure; or, Second—That it has been cultivated or improved in accordance with the usual and ordinary methods of husbandry; *provided*, that in no case shall adverse possession be considered established unless it be shown, in addition to the above requirements, that the land has been occupied and claimed for the period of five years, continuously, and that the party or persons, their predecessors and grantors, have paid all taxes, state, county and municipal, which may have been levied and assessed against said land for the period above mentioned. *As amended, Stats. 1887, 111.*

1. MORTGAGEE IN POSSESSION. When a debt, secured by mortgage, is barred by the statute of limitations, the mortgage is not thereby extinguished. *Henry v. Confidence G. & S. M. Co.*, 1 Nev. 619.

Even when all action or legal proceeding on the mortgage is barred, still, if the mortgagee gets rightful possession of the premises mortgaged, he may retain the same until his debt is paid. *Id.*

2. LEGAL TITLE. Party is entitled to maintain an action for the possession of real property at any time before the expiration of five years of adverse possession after he obtained the legal title. *Treadway v. Wilder*, 12 Nev. 108.

WHEN TIME BEGINS TO RUN. *Id.*

3. AMENDING COMPLAINT. When an action has been brought in due time for one piece or portion of property, it would be bad practice to allow the complaint to be so amended as to include another piece of property which would otherwise be protected from recovery by the statute of limitations, and thus embarrass the defense under that statute. *Bullion M. Co. v. Cæsus M. Co.*, 2 Nev. 168.

Claim Under Conveyance.

3710. SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises, under claim of title, exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim, for five years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Adverse Possession Defined.

3711. SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases: First—Where it has been usually cultivated and improved. Second—Where it has been protected by a substantial inclosure. Third—Where (though not inclosed) it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry; or for the use of pasturage, or for the ordinary uses of the occupant. Fourth—Where a known lot, or single farm, not exceeding three hundred and twenty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Claim Not Founded on Written Instrument.

3712. SEC. 10. Where it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon a written instrument, or a judgment, or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Adverse Possession—Inclosure or Cultivation.

3713. SEC. 11. For the purpose of constituting an adverse possession, by a person claiming title, not founded upon a written instrument, judgment, or decree, land shall be deemed to have been possessed and occupied in the following cases only: First—Where it has been protected by a substantial inclosure. Second—Where it has been usually cultivated or improved.

Landlord and Tenant.

3714. SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of five years from the expiration of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

Descent Cast.

3715. SEC. 13. The right of a person to the possession of any real property, shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

Disabilities.

3716. SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense, founded on the title to real property, or to rents, or services, out of the same, be, at the time such title shall first descend, or accrue, either: First, within the age of twenty-one years; or, second, insane; or, third, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or, fourth, a married woman.

Time Not to Run During Disability.

3717. SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this Act limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but, such action shall not be commenced, or entry or defense made, after that period.

Limitations of Various Actions—Six, Four, Three and Two Years.

3718. SEC. 16. (Sec. 1.) Actions other than those for the recovery of real property, can only be commenced as follows:

Within six years: First—An action upon a judgment, or decree of any court of the United States, or of any state or territory within the United States. Second—An action upon a contract, obligation, or liability, founded upon an instrument in writing, except those mentioned in the preceding section.

Within four years: First—An action on an open account for goods, wares, and merchandise sold and delivered. Second—An action for any article charged in a store account. Third—An action upon a contract, obligation, or liability, not founded upon an instrument in writing.

Within three years: First—An action upon a liability created by statute, other than a penalty or forfeiture. Second—An action for trespass upon real property. Third—An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. Fourth—An action for relief on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

Within two years: First—An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. Second—An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or an individual and the state, except when the statute imposing it prescribes a different limitation. Third—An action for libel, slander, assault, battery, or false imprisonment. Fourth—An action upon a statute for a forfeiture or penalty to the state. Fifth—An action against a Sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

Time, How Reckoned.

3719. (SEC. 2.) The time in section one of this Act shall be deemed to date from the last transaction, or the last item charged, or last credit given.

Transactions Already Barred.

3720. (SEC. 3.) The provisions of this Act shall not effect [affect] any transaction already barred by statute, or existing contracts or obligations made and incurred prior to the passage of this Act, but the same shall be governed in accordance with the provisions of law in force at the date they were contracted or incurred. *As amended, Stats. 1867, 86; 1877, 114.*

1. *IDEM*—RECORD OF MORTGAGE—NOTICE. When a mortgage is duly recorded it secures the mortgage against third persons to the same extent that he is secured against the mortgagor. *Bassett v. Monte Cristo M. Co.*, 15 Nev. 293.

2. **STATUTE OF LIMITATIONS—ACTION ON MORTGAGE WHERE REMEDY ON DEBT BARRED.** Where money is loaned without note or writing and a mortgage is given to secure its repayment, though the statute of limitations may run against an action on the debt in two years, it does not run against a foreclosure of the mortgage in less than four years. *Cookes v. Culbertson*, 9 Nev. 199.
3. **STATUTE OF LIMITATIONS.** When a deed to real estate, absolute upon its face, is given to secure a debt, and there is no agreement when such debt shall become due, the statute of limitations begins to run in favor of the grantee in possession immediately on the delivery of the deed. *Borden v. Clow*, 21 Nev. 275.
- OPERATION OF THE STATUTE OF LIMITATIONS—PAYMENT OF TAXES BY THE MORTGAGOR.** In an action to redeem mortgaged real estate the payment of taxes on the land by either the mortgagor or the mortgagee after the mortgage debt was due will not arrest the operation of the statute of limitations in favor of the mortgagee in possession, and such action is barred when not brought within six years after the maturity of the debt. *Id.*
4. **BAIL BOND—AN INSTRUMENT IN WRITING, BARRED IN SIX YEARS.** Not a forfeiture or penalty to the state, barred in two years. *State v. Murphy*, 23 Nev. 390.
5. **ACTION TO REDEEM PERSONAL PROPERTY FROM LIEN OF CHATTEL MORTGAGE—LIMITATION OF ACTIONS.** The statute of limitations does not begin to run against an action by the mortgagor of chattels to redeem until the possession of the mortgagee becomes adverse, although an action for the debt secured is barred. *Shoecraft v. Beard*, 20 Nev. 182.
6. **PAROL ADOPTION OF WRITTEN CONTRACT—STATUTE OF LIMITATIONS.** If a party adopt by mere parol promise the written contract of another, his obligation will be barred by the limitation prescribed for parol contracts. *Wheeler v. Schad*, 7 Nev. 204.
7. **WRIT OF RESTITUTION ON JUDGMENT—Not Issuable, When.** *Perkins v. S. N. S. M. Co.*, 10 Nev. 405.
8. **STATUTE OF LIMITATIONS AS AGAINST JUDGMENT.** *Mandlebaum v. Gregovich*, 24 Nev.
9. **STATUTE OF LIMITATIONS.** Where subscriptions to the capital stock of a corporation are payable upon call, and when no call is made, the obligation is a subsisting one, and the statute of limitations is not available as a defense unless set in motion by some adverse action. *Thompson v. Reno Savings Bank*, 19 Nev. 171.
10. **STATUTE OF LIMITATIONS—When Will Begin to Run.** *Davis v. Com. Lincoln Co.*, 23 Nev. 262, and 25 Nev.

Actions on Open Account, When Accrued.

3721. SEC. 17. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

1. **"MUTUAL, OPEN AND CURRENT ACCOUNTS."** A "mutual, open and current account, where there have been reciprocal demands," within the meaning of Section 17 of the statute of limitations, is one consisting of demands upon which each party respectively might maintain an action. *Warren v. Sweeney*, 4 Nev. 101.

THE SAME. If all the items on one side of an account were intended by the parties as payments or credits on account, it is not a mutual, open and current account where there are reciprocal demands. *Id.*

PERSONAL PROPERTY DELIVERED ON ACCOUNT. If an article of personal property be delivered to a creditor, with an understanding between him and the debtor that it shall apply as payment, the transaction would not constitute a mutual account, consisting of reciprocal demands between them. Otherwise, if delivered without such understanding. *Id.*

Action for Relief—Four Years.

3722. SEC. 18. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

Limitations to Apply to State.

3723. SEC. 19. The limitations prescribed in this Act shall apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties. *As amended, Stats. 1867, 86.*

DELINQUENT TAXES. *State v. Yellow Jacket S. M. Co.*, 14 Nev. 220.

Action Deemed Commenced, When.

3724. SEC. 20. An action shall be deemed to be commenced, within the

meaning of this Act, when the complaint has been filed in the proper court, and summons issued and placed in the hands of the Sheriff of the county, or other person authorized to serve the same.

Time of Absence of Defendant from State Not to Count.

3725. SEC. 21. If, when the cause of action shall accrue against a person, he be out of the state, the action may be commenced within the time herein limited after his return to the state; and if after the cause of action shall have accrued he depart the state, the time of his absence shall not be part of the time prescribed for the commencement of the action. *As amended, Stats. 1867, 86.*

1. SECTION 21 of the statute of limitations does not in any way qualify Section 5 of the same Act. *Chollar-Potosi M. Co. v. Kennedy*, 3 Nev. 361.

Section 5 prescribes the general rule as to limitations of real actions or actions for the possession of real estate, and Sections 14 and 15 declare the only exceptions to that rule. *Id.* Section 16 declares the limitation in personal actions, and Section 21 the exceptions to the general rule. *Id.*

2. CONSTRUCTION OF STATUTE OF LIMITATIONS. Section 21 of the statute of limitations in the use of the expression "cause of action," includes real actions or actions as to real estate as well as personal action. *Robinson v. Imperial M. Co.*, 5 Nev. 44.

3. ABSENCE FROM STATE. Defendant, as to avail himself of the bar of the statute of limitations, must have been within the state for the full time limited by the statute after the cause of action accrued against him. *Todman v. Purdy*, 5 Nev. 238.

4. STATUTE OF LIMITATIONS—CONSTRUCTION OF SECTION 21. Section 21 of the statute of limitations applies to the class of cases mentioned in Section 32 as well as those mentioned in Section 16. It applies to all causes of action; to foreign corporations as well as individuals absent from the state; to contracts made out of the state to be performed within it, as well as contracts made within the state. *Sutro T. Co. v. S. B. M. Co.*, 19 Nev. 121.

5. FOREIGN CORPORATION CANNOT PLEAD STATUTE OF LIMITATIONS. *Robinson v. Imp. M. Co.*, 5 Nev. 44; *State v. C. P. R. Co.*, 10 Nev. 47; *Barstow v. Union Con. M. Co.*, 10 Nev. 386; *Todman v. Purdy*, 5 Nev. 238.

Continuance of Disability Not to Count.

3726. SEC. 22. If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, or against a Sheriff or other officer for an escape, be, at the time the cause of action accrued, either: First, within the age of twenty-one years; or, second, insane; or, third, imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than his natural life; or, fourth, a married woman; the time of such disability shall not be a part of the time limited for the commencement of the action.

Representative of Deceased Person.

3727. SEC. 23. If the person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

1. SECTION 23 CONSTRUED. *Wick v. O'Neale*, 2 Nev. 303.

2. ON REHEARING—STATUTE OF LIMITATIONS, SECTIONS 18 AND 23 CONSTRUED. In construing the statute of limitations: *Held*, that the mortgagee is entitled to have a person *in esse* within this state, against whom she could bring suit, for the full period of time prescribed in Section 16, and that the object of Section 23 was to extend the time, in certain cases, within which actions might be commenced and was not intended to limit the time given by other sections of the act. *Rickards v. Hutchinson*, 18 Nev. 216.

Action by Alien Enemy.

3728. SEC. 24. When a person shall be an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war

shall not be a part of the period limited for the commencement of the action; *provided*, however, that nothing in this section shall be so construed as to consider any citizen or person of any state engaged in rebellion against the United States government as an alien.

Judgment Reversed—Action to Be Brought Within One Year.

3729. SEC. 25. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after the reversal.

Stayed by Injunction.

3730. SEC. 26. When the commencement of one action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

Disability, When Available.

3731. SEC. 27. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Where Disabilities Coexist.

3732. SEC. 28. When two or more disabilities coexist, at the time the right of action accrues, the limitation shall not attach until they all be removed.

Penalty Against Corporators.

3733. SEC. 29. The preceding sections of this Act shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

Renewal of Cause to Be in Writing.

3734. SEC. 30. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

SEC. 31 amended, Stats. 1861, 40; amendatory Act repealed, Stats. 1867, 87.

1. **STATUTE OF LIMITATIONS—PART PAYMENT.** Part payment is not sufficient as a new promise to take a case out of the operation of the statute of limitations. *Wilcox v. Williams*, 5 Nev. 206.

ACKNOWLEDGMENT MUST BE DISTINCT. An acknowledgment, to take a case out of the operation of the statute of limitations, must be clear, explicit, and direct to the point that the debt is due. *Id.*

BURDEN OF PROOF ON NEW PROMISE. If a plaintiff, relying upon an acknowledgment in writing to take a case out of the operation of the statute of limitations, proves a general acknowledgment of indebtedness, the burden of proof is on the defendant to show that it related to a different demand from the one in controversy. *Id.*

CONDITIONAL NEW PROMISE. A promise to pay a debt when able, is not sufficient of itself as an acknowledgment or new promise to take a case out of the operation of the statute of limitations. *Id.*

2. **REQUISITES OF NEW PROMISE OR ACKNOWLEDGMENT.** The acknowledgment or promise in writing, contemplated by the statute of limitations (Sec. 30) to take a case out of its operation, must be made by the party to be charged or his authorized agent and to some one having interest or authority to receive it. *Taylor v. Hendrie*, 8 Nev. 243.

PART PAYMENT NO ACKNOWLEDGMENT—New Promise Must Be to Some One Authorized. *Id.*

Action on Contract Made Out of State.

3735. SEC. 32. An action upon a judgment, contract, obligation, or liability for the payment of money or damages obtained, made, executed, or incurred out of this state, can only be commenced as follows: First—Within one year, when

prior to the passage of this Act more than two, or less than five years have elapsed since the cause of action accrued. Second—Within six months, when prior to the passage of this Act more than five years have elapsed since the cause of action accrued. Third—Within two years, in all other cases, after the cause of action accrued. A right of action shall be deemed to have accrued on a judgment at the time of its rendition. *As amended, Stats. 1867, 87.*

When Action Barred Abroad, Barred Here.

3736. SEC. 33. When the cause of action has arisen in any other state or territory of the United States, or in a foreign country, and by the laws thereof an action there cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this state. *As amended Stats. 1867, 87.*

Acts Repealed—Rights Not Affected.

3737. (SEC. 10.) Sections thirty-three and thirty-four of said Act, and the Act entitled an Act amendatory of section thirty-four, of an Act entitled "An Act defining the time of commencing civil actions," approved November twenty-first, eighteen hundred and sixty-one, and the Act approved November twenty-third, eighteen hundred and sixty-one, entitled "An Act to amend an Act to define the time of commencing civil actions," approved by the Governor on the twenty-first day of November, eighteen hundred and sixty-one, are hereby repealed; but nothing herein contained shall be construed to affect rights already acquired, or defenses existing, at the time of the passage of this Act; and in computing the time within which to commence actions, the time which had elapsed at the time of the passage of this Act, and which might have been plead prior thereto, shall be deemed and held a part of the time herein provided for. *Act of March 5, Stats. 1867, 87.*

Section 34 of original Act was amended by Act of December 19, Stats. 1862, 82, and the time for commencing actions on judgments obtained and contracts, etc., made or executed without the state, was limited to six months. The amendatory Act was repealed as above.

Section 10, Act of 1867, 87, amends Section 33 of Act of 1861, 26, and the same Act of 1867 repeals Section 33 of Act of 1861.

An Act supplementary to an Act of the Governor and Legislative Assembly of the Territory of Nevada, approved November twenty-first, eighteen hundred and sixty-one, entitled "An Act defining the time of commencing civil actions."

Approved February 27, 1869, 95.

Actions for Real Property.

3738. SECTION 1. No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question, within five years before the commencement thereof.

An Act relating to the manner of commencing civil actions.

Approved December 20, 1862, 120.

Actions on Contract.

3739. SECTION 1. In all actions hereafter brought on contract, the defendants may be sued by the name or style under which the contract was made, and upon its being shown on the trial who are the persons of whom the name or style are descriptive, judgment may be rendered against them as now provided by law.

JUDGMENT MAY BE RENDERED AGAINST INDIVIDUAL MEMBERS. *Gillig v. Lake Bigler R. Co.*, 2 Nev. 214.

An Act prescribing the manner of commencing and maintaining actions by or against counties.

Approved February 16, 1864, 45.

Actions, Where Brought.

3740. SECTION 1. Actions against a county may be commenced in the district court of the judicial district embracing said county; *provided*, that actions between counties shall be commenced in a court of competent jurisdiction in any county not a party to the action.

Process and Papers.

3741. SEC. 2. In counties where there is a Board of County Commissioners, having an acting Chairman or President of such board, the original process and papers shall be served on such Chairman or President, in the same manner as upon private persons; when there is no such Chairman or President, they shall in like manner be served on the Probate Judge of the county.

Duty of Officers.

3742. SEC. 3. Immediately on the service of such process, it shall be the duty of the officers so served to deliver such process, and all papers accompanying the same, to the District Attorney for such county.

In Name of County.

3743. SEC. 4. Actions brought for or against a county shall be in the name of such county.

1. MONEY LOANED TO COUNTY COMMISSIONERS—May Be Recovered With Interest, When. *Waitz v. Ormsby Co.*, 1 Nev. 370.

ABOVE ACT DISCUSSED. *Id.*

2. RIGHT OF ACTION AGAINST COUNTIES IN ABSENCE OF STATUTORY AUTHORITY, IN CERTAIN CASES. *Humboldt Co. v. Lander Co.*, 24 Nev.

3. ACTION AGAINST COUNTY IN OTHER JUDICIAL DISTRICT—Waiver of Change of Venue—Jurisdiction. *Clarke v. Lyon Co.*, 8 Nev. 181.

4. JURISDICTION OF ACTIONS AGAINST COUNTIES DETERMINED BY SAME RULES AS AGAINST NATURAL PERSON. Justice Court has jurisdiction. *Floral Spring W. Co. v. Rives*, 14 Nev. 434.

An Act concerning the writ of habeas corpus.

Approved December 19, 1862, 98.

Habeas Corpus.

3744. SECTION 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

Application, What to State.

3745. SEC. 2. Application for such writ shall be made by a petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and shall specify: First—That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty; the officer or person by whom he is so confined, or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known. Second—If the imprisonment be illegal, the petition must also state in what the alleged illegality consists. Third—The petition must be verified by the oath or affirmation of the party making the application.

1. HABEAS CORPUS, SUFFICIENCY OF PETITION. A petition for habeas corpus which fails to state any facts from which it can be inferred that petitioner's imprisonment is illegal is insufficient to authorize the issuance of the writ. *Ex Parte Allen*, 12 Nev. 87.
2. WHAT PETITION MUST STATE. *Ex Parte Deny*, 10 Nev. 212.
3. PETITION MUST MAKE OUT PRIMA FACIE CASE. *Ex Parte Isbell*, 11 Nev. 295; *Ex Parte Allen*, 12 Nev. 87.

4. HABEAS CORPUS. The writ of habeas corpus is not intended to have the force or operation of an appeal, writ of error, or certiorari; nor is it designed as a substitute for either. Ex Parte Maxwell, 11 Nev. 428; Ex Parte Winston, 9 Nev. 71; Ex Parte Smith, 2 Nev. 33; Ex Parte Bergman, 18 Nev. 331.

Who May Grant Writ.

3746. SEC. 3. Such writ of habeas corpus may be granted by any Judge of the supreme or district courts, at any time in term or vacation.

STATE JURISDICTION ON HABEAS CORPUS AS TO OFFENSES AGAINST THE UNITED STATES. A state court or Judge cannot on habeas corpus examine or decide whether a particular offense charged in an indictment, found in a United States Court, is or is not an offense against the laws of the United States. Ex Parte Hill, 5 Nev. 154.

Granted Without Delay.

3746½. SEC. 4. Any Judge empowered to grant a writ applied for under this Act, if it appear that the writ ought to issue, shall grant the same without delay.

To Whom Directed and What Commanded.

3747. SEC. 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person, so imprisoned or detained, as it is alleged by the petition, before the Judge, at such time as the Judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his detention, and have then and there such writ.

To Whom Delivered.

3748. SEC. 6. If such writ be directed to the Sheriff or other ministerial officer, it shall be delivered by the Clerk of the court presided over by the Judge issuing said writ to such officer without delay.

By Whom Served.

3749. SEC. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the Sheriff or his deputy, and shall be by him served upon such person by delivering the same to him without delay.

Service, How Made.

3750. SEC. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling house, or the place where the party is confined or under restraint. The service of said writ is made by serving a copy and exhibiting the original, and, where posting is required, by posting a copy.

Refusal to Obey, Judge to Issue Attachment.

3751. SEC. 9. If the officer or person to whom such writ is directed refuse, after due service as aforesaid, to obey the same, it shall be the duty of the Judge, upon affidavit, to issue an attachment against such person, directed to the Sheriff, or, if the Sheriff be the defendant, to an Elisor, appointed for the purpose by the Judge, commanding him forthwith to apprehend such person and bring him immediately before such Judge; and upon being so brought he shall be committed to the jail of the county until he make due return of such writ, or be otherwise legally discharged.

Return of Writ, What to Be Stated.

3752. SEC. 10. The party upon whom such writ shall be duly served shall state in his return plainly and unequivocally: First—Whether he have or have not the party in his custody, or under his power or restraint. Second—If he have the party in his custody or power, or under his restraint, he shall state the authority and cause of such imprisonment or restraint, setting forth the same at

large. Third—If the party be detained by virtue of any writ, warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the Judge on the hearing of such return. Fourth—If the officer or person upon whom such writ shall have been served shall have had the party in his power or custody, or under his restraint, any time prior or subsequent to the date of the writ of habeas corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place. Fifth—The return must be signed by the person making the same, and, except when such person shall be a sworn public officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

Requisites of Return. *Ex Parte Salge*, 1 Nev. 449.

Duty of Officer to Make Return to Writ. *Ex Parte Hill*, 5 Nev. 154.

Party to Be Brought.

3753. SEC. 11. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next two sections.

When Not Able to Appear.

3754. SEC. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the Judge, the officer or person in whose custody or power he is, may state that fact in his return to the writ, verifying the same by affidavit.

Absence of Party.

3755. SEC. 13. If the Judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such Judge may proceed to decide on such return and to dispose of the matter, as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Hearing of the Return.

3756. SEC. 14. The Judge before whom a writ of habeas corpus shall be returned shall, immediately after the return thereof, proceed to hear and examine the return, and such other matters as may be properly submitted for his hearing and consideration.

Pleadings of Party.

3757. SEC. 15. The party brought before the Judge on the return of the writ may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

To Proceed to Trial.

3758. SEC. 16. Such Judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require.

Witnesses.

3759. SEC. 17. Such Judge shall have full power and authority to require and compel the attendance of witnesses by process of subpoena and attachment and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

1. HABEAS CORPUS—POWER OF THE DISTRICT JUDGE ON, AT PRELIMINARY EXAMINATION. When an accused person is held by a Judge for examination before him, under the provisions of the Habeas Corpus Act, he is invested with such powers only as are conferred on other magistrates in matters of preliminary examinations. *Ex Parte Ah Kee*, 22 Nev. 374.

2. **HABEAS CORPUS—COMMITMENT BY JUSTICE OF THE PEACE.** A person held in custody under a regular commitment of a Justice of the Peace will not be discharged on habeas corpus, unless it appears that the jurisdiction of the Justice has been exceeded or that the commitment issued without authority of any judgment, order or decree of any court or any provision of law. Ex Parte Winston, 9 Nev. 71; Ex Parte Edgington, 10 Nev. 215.
3. **HABEAS CORPUS—INQUIRY UPON.** A court is not authorized upon a writ of habeas corpus to inquire into the question of fact as to whether or not an indictment, regular upon its face, was ever found by the grand jury. Ex Parte Twohig and Fitzgerald, 13 Nev. 302.
- JUDGMENT OF CONVICTION.** A judgment of conviction in the district court, regular upon its face, is conclusive until reversed, and cannot be reviewed upon habeas corpus. Id.
4. **VALIDITY OF SENTENCE—When Immaterial.** Ex Parte Ryan, 17 Nev. 139.
5. **JURISDICTION OF COURT—Irregularity of Judgment.** Ex Parte Gafford, 24 Nev.
6. **HABEAS CORPUS.** This court will review, upon habeas corpus, the question of the constitutionality of an Act under which petitioner has been convicted, and if the Act is unconstitutional the petitioner will be discharged. Ex Parte Rosenblatt, 19 Nev. 438.
7. **APPLIES WHEN.** The provisions of the statute that the writ should issue "where a party has been committed on a criminal charge without reasonable or probable cause," only applies to cases where the evidence given upon the examination is insufficient to warrant the committing magistrate in holding the prisoner to answer. Ex Parte Allen. 12 Nev. 87.
8. **HABEAS CORPUS—For Want of Speedy Trial.** Ex Parte Stanley, 4 Nev. 113.
9. **HABEAS CORPUS—FUGITIVE FROM JUSTICE.** To hold a fugitive from justice to await the requisition of the Governor of another state, it must affirmatively appear from the complaint filed before the committing magistrate in this state: 1. That a crime has been committed in the other state. 2. That the accused has been charged in that state with the commission of such crime. 3. That he has fled from justice, and is within this state. Ex Parte Lorraine, 16 Nev. 63.

When Party Discharged.

3760. SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such Judge shall discharge such party from the custody or restraint under which he is held.

When Remanded.

3761. SEC. 19. It shall be the duty of such Judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree, or in cases of contempt of court.

91 Pac Rep 137

When Person May Be Discharged.

3762. SEC. 20. If it appears on the return of the writ of habeas corpus that the prisoner is in custody by virtue of process from any court of this territory, or Judge or officer thereof, such prisoner may be discharged, in any one of the following cases, subject to the restrictions of the last preceding section: First—When the jurisdiction of such court or officer has been exceeded. Second—When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged. Third—When the process is defective in some matter of substance required by law, rendering such process void. Fourth—When the process, though proper in form, has been issued in a case not allowed by law. Fifth—When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth—Where the process is not authorized by any judgment, order, or decree of any court, nor by any provision of law. Seventh—Where a party has been committed on a criminal charge without reasonable or probable cause.

Defect of Form of Warrant. *91 Pac Rep 137*

3763. SEC. 21. If any person be committed to prison, or be in custody of any officer on any criminal charge, by virtue of any warrant or commitment of a Justice of the Peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

Examination of Witnesses.

3764. SEC. 22. If it shall appear to the Judge, by affidavit, or upon hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such Judge, that the party is guilty of a criminal offense, or ought not to be discharged, such Judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant, or other necessary witnesses, to be subpoenaed to attend at such time as shall be ordered, to testify before such Judge; and upon the examination, he shall discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal.

Giving Bail.

3765. SEC. 23. Whenever any person may be imprisoned, or detained in custody, on any criminal charge, for want of bail, such person shall be entitled to a writ of habeas corpus, for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Recognizance.

3766. SEC. 24. Any Judge, before whom any person who has been committed on a criminal charge shall be brought on a writ of habeas corpus, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

May Remand to Custody.

3767. SEC. 25. If any party brought before the Judge, on the return of the writ, be not entitled to his discharge, and be not bailed where such bail is allowable, such Judge shall remand him to custody, or place him under the restraint from which he was taken, if the person, under whose custody or restraint he was, be legally entitled thereto.

1. WHEN PETITIONER SHOULD NOT BE DISCHARGED. *Ex Parte Kitchen*, 19 Nev. 178.

2. SUPREME COURT HAS AUTHORITY TO ISSUE COMMITMENT. *Ex Parte Ricord*, 11 Nev. 287.

Judge May Order Change of Custody.

3768. SEC. 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such Judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Pending Judgment on Proceedings.

3769. SEC. 27. Until judgment be given on the return, the Judge, before whom any party may be brought on such writ, may commit him or her to the custody of the Sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Defect of Form Not Material.

3770. SEC. 28. No writ of habeas corpus shall be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the Judge before whom he is to be brought.

Person Discharged Not Again Imprisoned.

3771. SEC. 29. No person who has been discharged by the order of the Judge upon a habeas corpus issued pursuant to the provisions of this Act, shall be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases: First—If he shall have been discharged from custody on a criminal charge, and be afterwards committed for the same offense by legal order or process. Second—If after a discharge for defect of proof, or for any defect of the process, warrant, or commitment, in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offense.

Warrant Instead of Writ.

3772. SEC. 30. Whenever it shall appear by satisfactory proof, by affidavit, to any Judge authorized by law to grant a writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such Judge, before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, said Judge may cause a warrant to be issued, reciting the facts, and directed to the Sheriff or any Constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him or her before such Judge, to be dealt with according to law.

Arrest of Restraining Party.

3773. SEC. 31. Such Judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Execution of Warrant.

3774. SEC. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the Judge who may have directed the issuing of such warrant.

Return to, and Trial.

3775. SEC. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial, shall be thereon had as upon the return to a writ of habeas corpus.

Discharge or Remand.

3776. SEC. 34. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

Writ May Issue on Non-Judicial Day.

3777. SEC. 35. Any writ or process authorized by this Act may be issued and served on the first day of the week, commonly called Sunday, or any other non-judicial day.

Greeley v. Holland, 14 Nev. 320.

By Whom Issued.

3778. SEC. 36. All writs, warrants, processes, and subpoenas, authorized by the provisions of this Act, shall be issued by the Clerk of the Court, and, except subpoenas, sealed with the seal of the court, and shall be served and returned forthwith, unless the Judge shall specify a particular time for any such return.

Penalty for Refusing Writ.

3779. SEC. 37. If any Judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he or she shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by an action of debt in any court having cognizance thereof.

Penalty for Refusing to Obey Writ.

3780. SEC. 38. Any person having in his custody or under his restraint or power any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this Act, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such Judge, shall

be deemed guilty of a misdemeanor, and fined in a sum not exceeding five thousand dollars.

Accessories.

3781. SEC. 39. Every person who shall knowingly aid or assist in the commission of any offense specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section mentioned.

Further Penalty.

3782. SEC. 40. Every person convicted of any offense under the provisions of the last two preceding sections, in addition to the punishment therein mentioned, may be also imprisoned in the county jail for a term not exceeding two years.

An Act regulating proceedings upon quo warranto and information in the nature thereof.

Approved February 21, 1865, 164.

Against Whom Information May Be Filed.

3783. SECTION 1. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by the laws of this state, or the laws of the late Territory of Nevada; or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this state without being authorized by law; or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

1. PROPER REMEDY—QUO WARRANTO—PROHIBITION. The question of the constitutionality of the statute increasing the number of District Judges to four and the right of respondent to hold the office of District Judge under that statute, can only be raised by a direct proceeding of quo warranto and is not properly before the court by a proceeding for a writ of prohibition. *Walcott v. Wells*, 21 Nev. 47.

2. ABOVE SECTION CONSTRUED—WHEN WRIT WILL NOT LIE. *Ryan v. Cronan*, 23 Nev. 437.

By Whom Filed.

3784. SEC. 2. Such information may be filed by the Prosecuting or District Attorney of the proper county, whenever he deems it his duty so to do, or an occasion therefor arises.

Who May Direct.

3785. SEC. 3. He must file such information when directed to do so by the Governor, the legislature, the district court, or the County Commissioners.

Information to Consist of What.

3786. SEC. 4. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original complaint.

SUFFICIENCY OF COMPLAINT. *Greeley v. Holland*, 14 Nev. 320.

Summons to Issue.

3787. SEC. 5. Such statement shall be filed in the Clerk's office, and summons issued and served in the same manner as provided for the commencement of civil actions in the district court.

May Appear and Answer.

3788. SEC. 6. The defendants may appear and answer such information in the usual way as in civil actions; and, issue being joined, the case shall be tried in the same manner as civil actions, as nearly as may be.

What to Set Forth.

3789. SEC. 7. When the defendant is holding an office to which another is

claiming the right, the information shall set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties.

Judgment Favorable.

3790. SEC. 8. If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

Books, etc., to Be Delivered.

3791. SEC. 9. The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody, or under his control, belonging to said office, to the parties entitled thereto.

May Recover Damages.

3792. SEC. 10. When the judgment has been rendered in favor of the claimant, he may, at any time within one year thereafter, bring suit against the defendant, and recover the damages he has sustained by reason of the act of the defendant.

May Be Filed, When.

3793. SEC. 11. When several persons claim to be entitled to the same office or franchise, an information may be filed against any or all of said persons, in order to try their respective rights thereto.

Judgment Against Person.

3794. SEC. 12. If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege; or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

Individual Powers.

3795. SEC. 13. If the defendant be found to have exercised merely certain individual powers and privileges to which he is not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

Information by Private Individuals.

3796. SEC. 14. An information may be upon the relation of a private individual, and when upon the relation of a private individual, it shall be so stated in the complaint and proceedings, and such individual shall be responsible for costs, in case they are not adjudged against the defendant. In other respects, the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

Costs—Pretended Corporation.

3797. SEC. 15. In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

Court Shall Appoint Trustee.

3798. SEC. 16. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint some disinterested person as Trustee of the creditors and stockholders, who shall receive a compensation for his services to be fixed by the court.

Bond of Trustee.

3799. SEC. 17. Said Trustee shall enter into bond in such a penalty, and with such security, as the court approves, conditioned for the faithful discharge of his duties.

Suit on Bond.

3800. SEC. 18. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the Trustee in the discharge of his duties.

Duty of Trustee.

3801. SEC. 19. The Trustee shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

Books and Papers.

3802. SEC. 20. The court shall, upon an application for that purpose, order an officer of such corporation, or any other person having possession of any of the effects, books, or papers of the corporation, in anywise necessary for the settlement of its affairs, to deliver the same to the Trustee.

Inventory Filed With Clerk.

3803. SEC. 21. As soon as practicable after his appointment, the Trustee shall make and file in the office of the Clerk of the Court, an inventory of all the effects, rights, and credits, which come to his possession or knowledge, the truth of which inventory shall be sworn to.

To Sue for Debts.

3804. SEC. 22. He shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come into his hands, in the same manner as though he was the executor of a deceased person.

Directors, When Liable.

3805. SEC. 23. When judgment of ouster is rendered against a corporation on account of the misconduct of the Directors, or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

Penalty for Refusal to Obey Order of Court.

3806. SEC. 24. Any person who, without good reason, refuses to obey an order of the court, as herein provided, shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

Duty of Prosecuting Attorney.

3807. SEC. 25. It is made the duty of the several Prosecuting or District Attorneys in this state to be diligent in their endeavors to carry out the provisions of this Act, and in ascertaining if any cause exist for instituting such proceedings as are herein provided for.

To Have Precedence.

3808. SEC. 26. All proceedings under this Act shall have precedence over all other cases, in order and time of trial, except criminal action, and shall be placed upon the calendar for trial immediately upon issue being joined, whether in law or in fact.

Compensation of District Attorney.

3809. SEC. 27. When judgment is against the defendant, the court shall allow to the Prosecuting or District Attorney such sum of money as may seem reasonable for his services; which sum shall be taxed with and collected as the other costs in the proceeding; unless judgment is rendered against the defendant no costs shall be allowed, except as provided for in section fourteen of this Act.

1. QUO WARRANTO—Toll Road Franchise—Abandonment—Burden of Proof. *State v. Haskell*, 14 Nev. 209.

2. FICTITIOUS CONTROVERSY—Will Be Dismissed. *State v. McCullough*, 20 Nev. 154.

3. COLLATERAL QUESTIONS WILL NOT BE INQUIRED INTO ON QUO WARRANTO. *State v. Horton*, 19 Nev. 189.
4. JURISDICTION OF SUPREME COURT—Contest for State Office by Quo Warranto in Absence of Valid Statute to Contest Election of State Officer. *McMillan v. Sadler*, 25 Nev.

An Act providing for the appointment of Elisors.

Approved December 10, 1862, 7.

When to Act—Must Give Bond, When.

3810. SECTION 1. Process and orders, in an action or proceeding, may be executed in any county in this state by a person designated by the court, or the Judge thereof, or a Probate Judge of the county in which the action or proceeding is pending, and denominated an Elisor, in the following cases: First—When the Sheriff is a party. Second—When there is a vacancy in the office of Sheriff. Third—When it shall be made to appear, by affidavit, to the satisfaction of the court in which the suit or proceeding is pending, or the Judge thereof, or the Probate Judge of the county where the proceeding or action is pending, that the Sheriff, by the reason of any bias, prejudice, or other cause, would not act promptly or impartially; *provided*, said court or Judge may require such person so appointed to give a bond, with sufficient security, in such amount and with such condition, to the person to be served, as the court or Judge may deem necessary to secure the rights of the party.

Execution of Process by Elisor.

3811. SEC. 2. When process is delivered to an Elisor, he shall execute it in the same manner as the Sheriff is required to execute similar process in other cases.

Sheriff, When Arrested, How Confined.

3812. SEC. 3. If the Sheriff, on being arrested by an Elisor, or if another, on being arrested in an action in which the Sheriff is a party, upon an order of arrest, in a civil action, neglect to give bail or make a deposit of money instead thereof, or if he be arrested on execution against his body, or on a warrant of attachment, he shall be confined in a house other than the house of the Sheriff or the county jail, in the same manner as the Sheriff is required to confine a prisoner in the county jail; the house in which he is thus confined shall thereupon become, for that purpose, the county jail.

Powers and Duties of Elisors.

3813. SEC. 4. An Elisor, appointed to execute process and orders in the cases mentioned in this Act, shall be invested with the powers, duties, and responsibilities of the Sheriff, in the execution of such process or orders, and in every matter incidental thereto, and shall be entitled to the same fees as a Sheriff would be entitled to for like services.

An Act prescribing the mode of maintaining and defending possessory actions on public lands in this state.

Approved March 9, 1865, 343.

May Defend Possession.

3814. SECTION 1. Any person now legally occupying and settled upon, or who may hereafter occupy or settle upon, any of the public lands in this state, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injuries done to, his or her possession of said land, against any person or persons so interfering with or injuring such land or possession; *provided*, that if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same, for the purposes aforesaid, shall not preclude the working of such

mines by any person or persons desiring so to do, as fully and unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes.

Extent of Claim 160 Acres.

3815. SEC. 2. Every such claim, to entitle the holder to maintain any action as aforesaid, shall not contain more than one hundred and sixty acres, and the same shall be surveyed and marked by metes and bounds, so that the boundaries may be readily traced and the extent of such claim easily known; and no person shall be entitled to maintain any such action for possession of, or injury to, any claim, unless he or she occupy the same, and shall have complied with the provisions of the third and fourth sections of this Act.

Claims Recorded.

3816. SEC. 3. Any person claiming any of the public lands in this state shall have the same surveyed by the County Surveyor of the county in which said lands are situated, and shall have the plot of such survey duly certified to by said Surveyor, recorded in the office of the County Recorder, and shall take and subscribe his or her affidavit that he or she has taken no other claim under this Act, and that, to the best of his or her knowledge and belief, the said lands are not claimed under any existing title.

Land Improved in Certain Time.

3817. SEC. 4. Within ninety days after the date of said record, the party recording is hereby required to improve the lands thus recorded to the value of two hundred dollars, by putting such improvements thereon as shall partake of the realty, unless such improvements shall have been made prior to the application for survey and record, according to section third of this Act.

Occupant May Absent Himself—Fee to Be Paid.

3818. SEC. 5. At any time after the provisions of the second, third and fourth sections of this Act shall have been complied with, the party so complying shall be permitted to absent himself or herself from such claim, without being required to occupy the same, for a period of not more than twelve months; *provided*, the person so wishing to absent himself or herself shall first pay to the Treasurer of the county in which said claim shall be situated, the sum of fifteen dollars, in gold or silver coin, upon which payment the Treasurer shall issue a receipt for the same. At any time within twelve months after the date thereof, such receipt shall be received as prima facie evidence of possession in any court having jurisdiction in such cases. Any person absenting himself or herself from said claim for a longer period than sixty days, without first paying the sum provided in this section, shall forever forfeit his or her claim to the lands. One-half of the amount paid to any County Treasurer, under the provisions of this section, shall be paid by said Treasurer into the general fund of such county, and the balance into the state treasury, whenever making his regular settlements with the State Treasurer. The State Treasurer shall set apart and retain all moneys received from such source as a special fund, which may hereafter be appropriated by law for the maintenance and protection of the insane.

Proceedings in Actions.

3819. SEC. 6. On the trial of any such causes, the possession or possessory right of the plaintiff, shall be considered as extending to the boundaries embraced in such survey, so as to enable him or her, according to section third of this Act, to have and maintain any action as aforesaid, without being compelled to prove an actual inclosure.

Lands Deemed Public—Action for Unlawful Entry.

3820. SEC. 7. All lands in this state shall be deemed and regarded as public lands, until the legal title is known to have passed from the government to private individuals or parties. Every person who shall have complied with the

provisions of this Act shall be deemed and held to have the right or title of possession of all the lands embraced within their survey, not to exceed one hundred and sixty acres; and any person who shall thereafter, without the consent of the person so complying, enter into or upon said lands adversely, shall be deemed and held guilty of an unlawful and fraudulent entry thereon, and may be removed therefrom by proceedings had before any Justice of the Peace of the township in which the lands are situated (or in case of the absence or other disability of such Justice, before any other Justice of an adjoining township). Such proceedings may be commenced and prosecuted under the provisions of an Act of the legislature of the State of Nevada, entitled "An Act concerning forcible entries and unlawful detainers," approved February sixteenth, eighteen hundred and sixty-five; and all the provisions contained in said Act are made applicable to proceedings under this Act. *As amended, Stats. 1869, 72.*

See Sec. 3822 *et seq.*

Acts Repealed.

3821. SEC. 8. Sections ten and thirteen of an Act passed by the legislative assembly of the Territory of Nevada, entitled "An Act to regulate surveys and surveying," approved November twenty-ninth, one thousand eight hundred and sixty-one, and all other Acts or parts of Acts, so far as the same are inconsistent with, or repugnant to, the provisions of this Act, are hereby repealed.

1. **CONTEST FOR PUBLIC LAND—PRACTICE ACT.** Contests for public land are governed by the provisions of the Practice Act so far as applicable. *Burbank v. Rivers*, 20 Nev. 81.
2. **SECTIONS 16 AND 36—Enabling Act of Congress Construed—Preëmptioners.** *Layton v. Farrell*, 11 Nev. 451.
3. **POSSESSION OF PUBLIC LANDS.** What acts are sufficient to constitute such a possession of public land as will maintain ejectment, must, in a great measure, depend upon the character of the land, the locality, and the object for which it is taken up. *Sankey v. Noyes*, 1 Nev. 68; *Eureka M. Co. v. Way*, 11 Nev. 171; *Lechler v. Chapin*, 12 Nev. 65.
4. **ACTUAL BONA FIDE OCCUPATION NECESSARY.** *Sankey v. Noyes*, 1 Nev. 68; *Kraft v. Carlow*, 9 Nev. 20; *Rivers v. Burbank*, 13 Nev. 398; *Brown v. Roberts*, 1 Nev. 402; *Staininger v. Andrews*, 4 Nev. 59.
5. **OFFICIAL ACTS OF OWNERSHIP ARE NOT "ACTUAL BONA FIDE POSSESSION."** *Kraft v. Carlow*, 9 Nev. 20.
6. **TENANTS IN COMMON.** Until there is some decisive act to show an ouster or adverse possession, the possession of one joint tenant, or tenant in common, inures to the benefit of all cotenants. *Van Valkenburg v. Huff*, 1 Nev. 142.
7. **POSSESSORY CLAIM—When May Be Taxed.** *State v. C. P. R. Co.*, 21 Nev. 247.
8. **ACTUAL POSSESSION OF LAND—What.** *Robinson v. Imp. M. Co.*, 5 Nev. 44.
- LOCATION AND POSSESSION OF LAND FOR MILL SITE AND WATER RIGHT.** *Id.*
- DIFFERENCE BETWEEN APPROPRIATION OF LAND AND WATER.** *Id.*
- Town Site Appropriations—Forcible Interruption of Settlement of Public Lands.** *Id.*
9. **POSSESSORY TITLE TO PUBLIC LANDS—Acquired in Only Two Ways.** *Staininger v. Andrews*, 4 Nev. 59.
- REASONABLE TIME TO IMPROVE PUBLIC LANDS—Possession Necessary to Maintain Ejectment—Actual Possession—Reasonable Diligence in Taking Actual Possession—Question of Fact.** *Id.*
10. **PRIORITY OF POSSESSION.** When no better right than possession is shown, he who is prior in time is prior in right. *Brown v. Killabrew*, 21 Nev. 437.
- EJECTMENT—PERMISSIVE OCCUPANCY OF LANDS.** One who has purchased and received a conveyance of the improvements and possessory right of a settler on unsurveyed public lands, is entitled to recover in ejectment against one who entered by his permission and afterwards refused to surrender possession. *Id.*
11. **WHAT CONSTITUTES ACTUAL POSSESSION OF LAND.** Actual possession of land consists in subjecting it to the will and dominion of the occupant, and must be evidenced by those things which are essential to its beneficial use. The law requires that the extent of the claim should be clearly defined, and that the possession should be open, notorious and continuous. *Courtney v. Turner*, 12 Nev. 345; *Robinson v. Imp. M. Co.*, 5 Nev. 44; *Rogers v. Cooney*, 7 Nev. 213.
12. **WHEN AGRICULTURAL LAND NEED NOT BE FENCED.** *Courtney v. Turner*, 12 Nev. 345.

13. **POSSESSION OF LAND**—When Inclosure Not Necessary. *Hamburg M. Co. v. Stephenson*, 17 Nev. 449.
14. **PRIMA FACIE CASE**—BURDEN OF PROOF. Prior possession of land by the plaintiff, and ouster by the defendant, makes a prima facie case for plaintiff, and throws the burden of proof on defendant to show that he has some superior right. *McFarland v. Culbertson*, 2 Nev. 280.
- WHAT PARTIES MUST SHOW.** *Id.*
15. **PREEMPTION CLAIM UNDER UNITED STATES LAWS**—When Cannot Be Made. *Nickals v. Winn*, 17 Nev. 188; *Nickals v. Bird*, 17 Nev. 195.
16. **PRIOR POSSESSION**—QUESTION OF FACT. In ejectment for land, on the ground of prior possession, if there is some evidence tending to prove acts of appropriate domain, its sufficiency is a question of fact for the jury and not one of law for the court to decide. *Sharon v. Davidson*, 4 Nev. 416.
- INSUFFICIENCY OF EVIDENCE.**—*Nonsuit.* *Id.*
17. **POSSESSION TO MAINTAIN TRESPASS QUARE CLAUSUM FREGIT.** It was formerly held necessary for the plaintiff to establish an actual possession of the *locus in quo*; but under more modern decisions a constructive possession is held sufficient. *Courchaine v. Bullion Co.*, 4 Nev. 369.
- RIGHT OF POSSESSION IN DEFENDANT**—Right of Preëmtor of Government Land—Recognized Preëmption Rights—Effect of Land Office Decision—Preëmption Rights Relate Back to First Steps. *Id.*
18. **STAININGER V. ANDREWS**, 4 Nev. 59, to the effect that a person claiming public land should be deemed in the actual possession of all within his marked boundaries while diligently prosecuting the work necessary to subject it to his dominion or control, cited with approval. *Robinson v. Imp. Co.*, 5 Nev. 44.

An Act concerning forcible entries and unlawful detainers.

Approved February 16, 1865, 160.

How Entry Made.

3822. SECTION 1. No entry shall be made into any lands, tenements, or other possessions, but in cases where entry is given by law; and in such case, only in a peaceable manner, not with strong hand, nor with multitude of people.

Possession Restored.

3823. SEC. 2. When any such forcible entry shall be made, or where the entry shall be made in a peaceable manner, and the possession shall be held by force against the person entitled to the possession, the person so forcibly put out, or so forcibly holden out of possession, shall be restored to such possession by action, to be commenced and prosecuted as in this Act provided.

Unlawful Detention.

3824. SEC. 3. It shall be unlawful for any person to hold over any lands, tenements, or other possessions, after the termination of the time for which they may have been demised or let to him, or her, or to the person under whom he or she holds possession; or contrary to the covenants of the lease or agreement under which he or she holds; or the lease or agreement of the person under whom he or she holds possession; or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days after the same shall have become due, as aforesaid.

Demand in Writing.

3825. SEC. 4. In all cases specified in the preceding section, and in all other cases where a person, not a tenant under the landlord by virtue of any lease or agreement, or where any person not holding possession as the tenant or subtenant of such landlord, may be found in possession of the premises, the landlord may, at any time within one year after such rent shall become due and remain unpaid, or after any holding over contrary to the terms of such lease, make demand, in writing, of such tenant or tenants, or of such person in possession of the premises, that he, she, or they, deliver the possession of the premises held as aforesaid; and if such tenant or tenants, or such person in possession of the

premises, shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, in case the term has expired, or the covenants or conditions of the lease require said premises to be surrendered, or to pay the rent, in case the term has not expired, but rent remains unpaid, then such tenant or tenants, or person in possession of the premises, shall be deemed guilty of an unlawful detainer.

Common Law Demand for Rent Not Necessary.

3826. SEC. 5. It shall not be necessary, in order to work a forfeiture for the non-payment of rent, to make demand for rent on the day on which the same becomes due, or at any particular time of day, but demand may be made of the tenant in person, or of any person in possession of the premises at any time within a year after such rent shall become due, and may be made for the whole amount due and unpaid at the date of making such demand. The failure on the part of the lessee, or his assigns, or the person in possession, to pay such rent upon such demand being made, shall have the same force and effect as if such demand had been made on the premises toward sunset on the day when the rent became due.

Landlord to Give Notice—Change of Terms—Holding Over.

3827. SEC. 6. In all leases of lands or tenements, or any interest therein, from month to month, the landlord may, and it shall be lawful for him, upon giving notice, in writing, at least fifteen days before the expiration of the month, to change the terms of the lease, to take effect at the expiration of said month. Said notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in said notice, if such tenant shall continue to hold such premises after the expiration of said month. In all leases of lands or tenements, or any interest therein, for a month, or any term less than a year, if the tenant holds over his term by consent of his landlord, the tenancy shall be construed to be a tenancy from month to month, or a tenancy for such term, less than a year, as the case may be; *provided*, that a tenancy from month to month may be terminated by the landlord giving notice of such termination ten days prior to the expiration of the month.

Complaint, What to State—Must Be Verified.

3828. SEC. 7. The complaint, in actions commenced or prosecuted under this Act, shall set forth the facts on which the plaintiff seeks to recover, and shall describe the premises sought to be recovered, with reasonable certainty, and may charge that the defendant has acted fraudulently in making such forcible entry, or holding such forcible possession (in case where the action is brought for a forcible entry, or forcible holding), and may claim such damages thereof as he may deem proper; and in case of rent due and unpaid, may state the amount thereof; and such complaint shall be verified in the mode prescribed by law for the verification of pleadings in civil cases.

Defendant, When Deemed Guilty of Fraud.

3829. SEC. 8. A defendant shall be deemed to be guilty of fraud, within the meaning of this Act, when the forcible entry or the forcible detainer are shown to have been made or done in bad faith, and knowing that the said defendant had no legal right to make such entry or detainer.

Order of Arrest.

3830. SEC. 9. Upon presenting the complaint in said action, duly verified as aforesaid, and charging fraud in making such forcible entry, or in holding such possession by force, to the Judge of the court in which such action is brought, an order for the arrest of the defendant or defendants shall be made by such Judge; and all the provisions of law from section seventy-six to section ninety-eight, both inclusive, in title five, chapter one, of an Act entitled "An Act to

regulate proceedings in civil cases in the courts of justice of the Territory of Nevada," approved November twenty-ninth, eighteen hundred and sixty-one, shall be, and are hereby made the rule of proceeding to said arrest and bail in said action of forcible entry or forcible detainer.

Act referred to repealed. See Sec. 3701.

Plaintiff to Show Possession.

3831. SEC. 10. On the trial of any action of forcible entry, or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show, in his defense, that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of said action, and that his interest therein is not then ended or determined, and such showing shall be a bar to the action in all cases provided for in this Act.

Occupants Only Necessary Defendants—Married Women.

3832. SEC. 11. No person other than the actual occupants of the premises shall be necessary parties defendant to proceedings under this Act; and in case a married woman be a tenant or occupant, and her husband be a non-resident, or cannot be personally served with the summons within the county within which the premises are situated, before the return day of such summons, her marriage shall not be a defense in such proceedings, but in case her husband be not found and served with summons, a judgment against her shall only be valid against property on the premises at the time of the commencement of the action.

When Verdict Is for Plaintiff.

3833. SEC. 12. If, upon the trial of any action under the provisions of this Act, the verdict of the jury, or the finding of the court, shall be in favor of the plaintiff, the court shall thereupon enter judgment for the plaintiff to have restitution of the premises, and the jury or the court (in case the action is tried without a jury) shall also find or assess the damages occasioned to the plaintiff by such forcible entry or forcible detainer, or holding over or not surrendering the demised premises, or, in case of rent unpaid, the amount of rent then due, and thereupon shall at once enter judgment against the defendant; if the same be for damages, for rent due and unpaid, for the amount of such damages; or, if the same be for damages for a forcible entry or forcible holding, then for three times the amount of such damages so found or assessed.

Proceedings on Trial Same as Other Actions.

3834. SEC. 13. The proceedings in or upon the trial of any such action, shall be the same as in other civil cases, except as herein otherwise provided, and judgment shall be entered, execution issued, and all other proceedings, both before and subsequent to judgment, be had as in other civil cases.

1. **FORCIBLE ENTRY AND UNLAWFUL DETAINER—RIGHT OF POSSESSION NOT INVOLVED—ADMISSION OF DEEDS ERRONEOUS.** In an action of forcible entry and unlawful detainer, neither title nor right of possession being involved, it is erroneous to admit quitclaim deeds in evidence, as tending to show possession. *Lachman v. Barnett*, 16 Nev. 154.

2. **FORCIBLE ENTRY IS A MISDEMEANOR UNDER THE COMMON LAW.** *Ex Parte Webb*, 24 Nev.

3. **JURISDICTION, FORCIBLE ENTRY AND DETAINER—Not Within Justice's Court.** *Peacock v. Leonard*, 8 Nev. 84.

GIST OF ACTION. *Id.*

4. **JUDGMENT OF CONFESSION—Cannot Be Entered in a Justice's Court.** *Paul v. Armstrong*, 1 Nev. 82.

5. **DEMAND NECESSARY.** A demand of possession must be made by the landlord before bringing suit against his tenant for holding over. Such demand is indispensable, and is as necessary to be made before suit, as that the relation of landlord and tenant should exist. *Paul v. Armstrong*, 1 Nev. 82.

6. AN ARREST CANNOT BE MADE under this Act unless fraud in either taking or holding is alleged. *Strozer v. Wines*, 24 Nev.

JUSTICE OF THE PEACE HAS NO JURISDICTION. *Id.*

7. COMMON LAW DEMAND FOR RENT NOT NECESSARY. *Hoopes v. Meyers*, 1 Nev. 433.

POSSESSION OF PART OF PROPERTY BY TENANT IN COMMON. No ejectment, but reduction in rent *pro tanto*. *Id.*

An Act concerning unlawful holding over of lands, tenements, and other possessions.

Approved March 8, 1865, 263.

Demand Made in Writing.

3835. SECTION 1. When any person or persons shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to him, her, or them, or to the person or persons under whom he, she, or they hold, or after any rent shall become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days after demand for payment thereof, in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant or tenants, or any person in possession of the premises, that he, she, or they shall deliver the possession of the premises held as aforesaid; and if such tenant or tenants, or person or persons in possession of the premises, shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent due and unpaid as aforesaid, upon complaint therefor to any Justice of the Peace of the proper county, the Justice shall proceed to hear, try, and determine the same in the manner in this Act provided.

Demand Not Necessarily Made on Certain Day.

3836. SEC. 2. It shall not be necessary, in order to work a forfeiture for non-payment of rent, to make a demand thereof on the day on which the same becomes due, or at any particular time of the day, but demand may be made of the tenant in person, or of any person in possession, at any time within a year after such rent shall become due, according to the terms of any lease or agreement, and may be made for the whole amount due and unpaid at the time of such demand; and the failure on the part of the lessee or his assigns, to pay such rent upon such demand being made, shall have the same force and effect as if demand had been made on the premises toward sunset on the day when the rent became due.

Parties Defendant—Married Woman.

3837. SEC. 3. No person, other than the actual occupants of the premises, shall be necessary parties defendant to proceedings under this Act, and in case a married woman be a tenant or occupant, and her husband cannot be personally served with the summons within the county in which the premises are situated before the return day of such summons, her marriage shall not be a defense in such proceedings; but in case her husband be not joined and served, a judgment against her shall only be valid against property on the premises at the time of the trial.

Change of Terms of Lease—Notice in Writing.

3838. SEC. 4. In all leases of land or tenements, or any interest therein, from month to month, the landlord may, and it shall be lawful for him, upon giving notice in writing, at least fifteen days before the expiration of the month, to change the terms of the lease, to take effect at the expiration of said month; said notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent and conditions specified in said notice, if such tenant shall continue to hold such premises after the expiration of the month. In all leases of lands or tenements, or any interest therein, for a month, or any less term than one year, and the tenant holds over his term by consent of his landlord, the tenancy shall be construed to be a tenancy

from month to month, or a tenancy for such term less than a year, as the case may be.

Premises Held Adversely.

3839. SEC. 5. The remedy provided for in this Act shall not apply as against any person who shall have held the premises demised, leased, or let to him, or to the person under or through whom he holds the possession for one year, adversely to the right, title, or claim of the landlord, or to the person under or through whom he claims.

Jurisdiction.

3840. SEC. 6. Any Justice of the Peace of the proper county shall have jurisdiction of all actions commenced and prosecuted, as in this Act provided.

Complaint and Summons.

3841. SEC. 7. When any complaint shall be made in writing, under oath, to any Justice of the Peace, of any such unlawful holding over, said Justice shall issue a summons, directed to the Sheriff, or any Constable of the county, commanding him to summon the person or persons complained of, to appear before said Justice, on a day in such summons named, which shall not be less than three, nor more than six days, from the day of issuing such summons, and at the place therein mentioned.

Service of Summons.

3842. SEC. 8. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a true copy thereof to such person or persons, at least two days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving such summons.

Service on Absent Defendant.

3843. SEC. 9. If at the time of making such complaint it shall be made to appear that the person or persons, against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the Justice to issue his summons, as hereinbefore provided, and the same may be served by leaving a true copy thereof, at the last or usual place of abode of such person or persons, not less than two days from the return day thereof; which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same; and the officer shall make a special return of the time and manner of serving said summons; and the suit shall thereafter proceed the same as though a personal service were had of such summons.

Trial by Justice or Jury.

3844. SEC. 10. After the return of the summons, served as hereinbefore provided, and at the time and place appointed in said summons, the Justice shall proceed to hear and determine said complaint, unless either party shall demand a jury, in which case the Justice shall issue a venire for a jury, in the same manner, and upon the same terms, as in other cases provided for trial by jury in justices' courts; and such jury shall be sworn as in other cases.

Adjournment of Trial, When Taken.

3845. SEC. 11. The Justice may, at his discretion, and for good cause shown, adjourn the trial of any cause under this Act, not exceeding five days; and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for want of some material witness, naming him, stating the evidence that he expects to obtain, showing that he has used due diligence to obtain such witness, and believes that if an adjournment be allowed he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial; in which case, if such person or persons will give bond, with

one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said Justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding thirty days.

Admission That Evidence Would Be Given.

3846. SEC. 12. If the complainant admit that the evidence stated in the affidavit mentioned in the last preceding section would be given by such witness, and agree that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be adjourned.

Testimony May Be Taken.

3847. SEC. 13. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner, and with the like effect, as is provided for the taking of testimony in other cases in justices' courts.

Judgment and Costs.

3848. SEC. 14. If, upon the trial of any complaint under this Act, the Justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said Justice shall immediately enter judgment for the complainant to have restitution of the premises, and shall tax the costs for the complainant, and shall issue execution therefor; but if the said Justice or jury find that the person complained of is not guilty, the Justice shall tax the costs against the complainant, and issue execution therefor. If the jury impaneled cannot agree upon a verdict, the Justice shall discharge them, and issue a new venire, returnable forthwith, or at some time agreed upon between the parties; and in case the jury fail to agree, each party shall pay one-half of the jury fee, which shall abide the final determination of the suit.

Verdict to Find Damages, etc.

3849. SEC. 15. In all cases of a verdict by the Justice or jury for the complainant, the damages shall be assessed, if claimed in the complaint, as well for waste and injury committed upon the premises, as for the rents and profits during such unlawful holding over, and the verdict shall also find the monthly value of the rents and profits of said premises; and the complainant shall be entitled to recover treble damages against the person or persons against whom judgment has been rendered, which damages shall be assessed by the Justice or jury, and entered as a judgment in the cause upon which execution shall issue.

Jurors and Witnesses.

3850. SEC. 16. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve or give evidence in any cause instituted under this Act, shall forfeit and pay a fine for every such default or refusal, to the use of the county, unless some reasonable cause be assigned; such fine, not exceeding twenty dollars, as the Justice shall think proper to impose, and execution shall issue therefor.

Appeal, Time for—How Taken.

3851. SEC. 17. If either party shall feel aggrieved by the verdict of the jury, or the decision of the Justice, he may appeal within ten days, as in other cases tried before Justices of the Peace, and he shall give bonds with two or more sufficient sureties, to be approved by said Justice, in all respects as appeals are perfected in other cases before Justices of the Peace, conditioned to pay all costs of such appeal, and abide the order the appellate court may make therein, and pay all rent and other damages justly accruing during the pending of such appeal; and upon the filing of the notice of appeal, and the affidavit of the appellant, that the appeal is taken in good faith, and that he intends to perfect said appeal, the Justice shall grant a stay of the writ of restitution, for not exceeding two days, for the purpose of allowing the appellant an opportunity to file his appeal bond, and for no other.

Stay of Proceedings.

3852. SEC. 18. Upon taking such appeal, all further proceedings in the cause shall be thereby stayed, and the appellate court, in all cases which are now pending, or which may hereafter be brought, shall proceed to try the case anew, and shall issue all necessary writs and process to carry out the provisions of this Act.

Possession of Premises.

3853. SEC. 19. If a writ of restitution shall have been issued previous to the taking of the appeal, the Justice shall give the appellant a certificate of the allowance of such appeal; and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings, by virtue of such writ; and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

Not to Quash for Want of Form.

3854. SEC. 20. In all cases of appeal under this Act, the appellate court shall not dismiss or quash the proceedings for want of form; *provided*, the proceedings have been conducted substantially according to the provisions of this Act; and amendments to the complaint, answer, or summons, in matters of form only, may be allowed by the court, at any time before final judgment, upon such terms as may be just; and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

Form of Summons.

3855. SEC. 21. The following or equivalent forms may be used in proceedings under this Act, to wit: Summons: The State of Nevada to the Sheriff or any Constable of the county of _____, greeting: Whereas, A. B., of the county of _____, hath exhibited unto me, a Justice of the Peace for said county, a complaint against C. D., of the county of _____, for that the said C. D., of the county of _____, on the ____ day of _____, A. D. _____, at the county of _____ (here insert the substance of the complaint with sufficient certainty). You are therefore commanded to summon the said C. D., if he be found in your county, to be and appear before me, at my office (stating the place), on the ____ day of _____, A. D. _____, then and there to make answer unto the complaint aforesaid. Given under my hand this ____ day of _____, A. D. _____. E. F., Justice of the Peace.

Form of Writ of Restitution.

3856. SEC. 22. Writ of restitution: The State of Nevada to the Sheriff or Constable of the county of _____, greeting: Whereas, A. B., of the county of _____ at a court of inquiry of an unlawful holding over of lands, tenements, and other possessions, held at my office (stating the place), in the county aforesaid, on the ____ day of _____, A. D. _____, before me, a Justice of the Peace for the county aforesaid, by the consideration of the court, has recovered judgment against C. D., to have restitution of (here describe the premises as in the complaint). You are therefore commanded, that taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same; and you are also commanded that of the goods and chattels of the said C. D., within said county, you cause to be made the sum of _____ dollars for the said plaintiff, together with the costs of suit indorsed hereon, and make return hereof within thirty days from this date. Given under my hand, this ____ day of _____, A. D. _____. E. F., Justice of the Peace.

ENTERING AND HOLDING UNDER LEASE NOT SIGNED BY TENANT. Holder to accept all covenants and obligations. (Discussed at length.) *Fitton v. Hamilton City*, 6 Nev. 196.

TERM CREATED BY HOLDING OVER. *Id.*

An Act to regulate appeals in the courts of justice of this state.

Approved March 11, 1865, 394.

Appeals.

3857. SECTION 1. There shall be no distinction as to the mode of taking or perfecting appeals, or as to the effect of them, between cases at law and cases in equity.

No Exceptions, No Reversal—Exceptions, How Settled.

3858. SEC. 2. In cases tried by the court, without a jury, no judgment shall be reversed for want of a finding, or for a defective finding of the facts, unless exceptions be made in the court below to the finding, or to the want of a finding; and in case of a defective finding, the particular defects shall be specifically and particularly designated; and upon failure of the court below to remedy the alleged error, the party moving shall be entitled to his exceptions, and the same shall be settled by the Judge as in other cases; *provided*, that such exceptions to the finding, or want of a finding, shall be filed in the court within five days after the making of the finding or decision to which exception is made.

Undertaking Filed.

3859. SEC. 3. No appeal shall be dismissed for insufficiency of the notice of appeal, or undertaking thereon; *provided*, that a good and sufficient undertaking, approved by a Judge of the Supreme Court, be filed in the supreme court before the hearing upon motion to dismiss the appeal, and upon payment of such reasonable costs as the court may adjudge; *provided*, that the respondent shall not be delayed, but may move, when the cause is regularly called, for the disposition of the same, if such undertaking be not given.

Bill of Exceptions, Part of Record—Necessary Papers on Appeal.

3860. SEC. 4. During the progress of a cause a party may take his bill of exceptions to the admission or exclusion of testimony, or to the rulings of the Judges on points of law, and it shall not be necessary to embody in such bill anything more than sufficient facts to show the point and pertinency of the exceptions taken. The presiding Judge shall sign the same as the truth of the case may be, and such bill shall then become a part of the record, and a party against whom judgment is rendered may appeal from such judgment without any further statement or motion; and on such appeal it shall only be necessary to bring to the supreme court the transcript of the pleadings, the judgment, and the bill or bills of exception so taken.

Absent or Non-Resident Defendant.

3861. SEC. 5. When the defendant resides out of the state, or is absent therefrom, and has not appeared in the action, and no attorney has been appointed by the court for such defendant, as provided in section thirty-one of an Act to regulate proceedings in civil cases in the courts of justice in the Territory of Nevada, approved November twenty-ninth, eighteen hundred and sixty-one [*repealed, Sec. 3701*], notices and other papers, on motion for new trial and on appeal, may be served upon the Clerk of the Court for each defendant, or the court may appoint an attorney for such defendant, to conduct the proceedings on his part upon such motion or appeal; and such notices and papers in that case may be served upon such attorney.

The balance of this Act relates to appeals from justices' courts, and is superseded by Civil Practice Act.

An Act regulating appeals to the supreme court.

Approved March 13, 1895, 58.

Original Papers May Be Certified to Supreme Court.

3862. SECTION 1. In all cases of appeal to the supreme court from final

judgments or from orders overruling motions for new trial, and in all other cases when ordered by the supreme court or a Judge thereof or by the District Judge or stipulated by the parties or their attorneys, it shall be in the discretion of the appellant to furnish the court with a transcript on appeal in accordance with the present provisions of the statute, or to have the original papers in the district court, including documentary evidence, maps and exhibits certified to the supreme court, or the appellant may furnish the court with a transcript of a portion of the record on appeal and have the remaining portion certified to the supreme court. In case he shall elect to have the original papers certified they shall be attached together and the pages numbered and indexed the same as transcript on appeal, and shall be certified by the Clerk of the District Court or by the respective parties or their attorneys to be such originals, and to constitute in whole or part the record on appeal and the Clerk shall then transmit them to the Clerk of the Supreme Court; *provided*, that where it would not be convenient to attach maps or exhibits to the other papers, they may be sent separately, properly identified and certified.

Original Papers So Certified to Be Returned.

3863. SEC. 2 Where such original papers have been so certified, the Clerk of the Supreme Court, at the time he transmits the remittitur, shall return them to the Clerk of the District Court. Any of the papers or documents so certified to the supreme court may be returned to the court below upon application of either party and order of one of the Judges and leaving a certified copy. Where it is necessary to present upon the appeal the minutes of the court or records containing entries affecting other cases, they shall be copied in the transcript the same as heretofore.

Beck v. Thompson, 22 Nev. 109; Peers v. Reed, 23 Nev. 404; Bliss v. Grayson, 24 Nev.

An Act relating to statements on appeal and motions for new trial.

Approved January 24, 1889, 22.

Presumed to Contain All Evidence.

3864. SECTION 1. In all cases wherein a statement on appeal or motion for new trial is required to be filed, such statement, when settled or agreed to, shall be presumed to contain all of the evidence and other matters pertinent to the proper presentation of the question or questions involved in said appeal or motion, unless the contrary affirmatively appears in such statement.

See Secs. 3292 and 3427.

An Act for the punishment of contempts and trespasses.

Approved March 11, 1865, 398.

Contempt in Certain Cases.

3865. SECTION 1. Every person who shall have been, or shall be hereafter, dispossessed or ejected from or out of any piece, parcel, lot, or tract of land, by the judgment, decree, or process of any court of competent jurisdiction, and who, not having legal right so to do, shall reënter into, or upon, or take possession of any such land, or any part thereof, or induce or procure any person not having legal right so to do, or shall aid or abet him therein, shall be deemed guilty of a contempt of the court by which said judgment or decree was rendered, or from which such process issued, and shall be tried and punished therefor, in the same manner and form as now provided by law in case of contempt not committed in presence of the court or Justice of the Peace.

Alias Process to Be Issued.

3866. SEC. 2. Upon a conviction for such contempt, the court or Justice of the Peace shall immediately issue an alias process, directed to the proper officer, and requiring him to restore the party entitled to the possession of such prop-

erty under the original judgment, decree, or process, to such possession, of which he shall have been dispossessed by the wrongful conduct or act herein declared to be a contempt.

An Act concerning juries.

Approved March 5, 1873, 126.

Who Are Qualified Jurors.

3867. SECTION 1. Every qualified elector of the state, whether registered or not, who has sufficient knowledge of the English language, and who has not been convicted of treason, felony, or other infamous crime, and who is not rendered incapable by reason of physical or mental infirmity, is a qualified juror of the county in which he resides, or the county to which it is attached for judicial purposes. *As amended, Stats. 1881, 23.*

SECS. 2 and 3 superseded by following Act.

Drawing of Jurors—Venire to Be Issued.

3868. SEC. 4. To constitute the regular panel of trial jurors for any term of the district court such number of names as the Judge may direct shall be drawn from the jury box. The regular panel of trial jurors may be drawn before the commencement of the term of court, and, if so drawn, the Judge thereof must make and file with the County Clerk an order that one be drawn, and the number of jurors to be drawn must be named in the order. The drawing shall take place in the office of the County Clerk, during regular office hours, in the presence of all persons who may choose to witness it. If the panel be drawn before the commencement of the term it shall be drawn by the Judge and Clerk, or, if the Judge so directs, by any one of the County Commissioners of the county and the Clerk, and if the Judge directs that the panel be drawn by one of the County Commissioners of the county and the Clerk, the Judge must make and file with the Clerk an order designating the name of such County Commissioner, and fixing the number of names to be drawn as trial jurors and the time at which the persons whose names are so drawn shall be required to attend in court. The drawing shall be conducted as follows: The number to be drawn having been previously determined by the Judge, the box containing the names of the jurors shall first be thoroughly shaken; it shall then be opened and the Judge and Clerk, or one of the County Commissioners of the county and the Clerk, if the Judge has so ordered, shall alternately draw therefrom one ballot until of non-exempt jurors the number determined upon is obtained; *provided*, that if the officers drawing such jury deem that the attendance of any juror whose name is so drawn cannot be conveniently and cheaply to the county obtained, by reason of the distance of the residence of such juror from the court or other cause, his name may, in the discretion of such officers, be returned to the box and in its place the name of another juror drawn whose attendance said officers may deem can be conveniently and cheaply to the county obtained. A list of the names so obtained shall be made out and certified by the officers drawing the jury, which list shall remain in the Clerk's office subject to inspection by any officer or attorney of the court, and the Clerk shall immediately issue a venire, directed to the Sheriff of the county, commanding him to summon the persons so drawn as trial jurors to attend in court at such time as the Judge may have directed, and the Sheriff shall make return of the venire at least the day before the day named for their appearance, after which the venire shall be subject to inspection by any officer or attorney of the court. *As amended, Stats. 1879, 33; 1881, 26.*

SECS. 5, 6 and 7 superseded by following Act.

Grand Jury, How and When Selected—When to Meet, etc.—Sheriff Shall Summon.

3869. SEC. 8. It shall be the duty of the District Judge and any one of the County Commissioners of the county, at least once in each year and as much oftener as the public interest may require, to select from the jury list twenty-four

persons who shall be summoned to appear as grand jurors at such time as the Judge may order; *provided*, that if the District Judge deems proper he may direct any one of the County Commissioners of the county and the Clerk to select the grand jurors, and such County Commissioner and Clerk, if the Judge so directs, shall select from the jury list twenty-four persons as grand jurors. If the Judge directs the grand jurors to be selected by one of the County Commissioners of the county and the Clerk, the Judge must make and file with the Clerk, an order designating the name of such County Commissioner, and the Judge shall in said order fix the time during the term of court when said grand jurors shall be required to appear; and if from any cause, such County Commissioner and Clerk should fail to select the grand jurors, the Judge and any one of the County Commissioners may, at any time, select the same. A list of the names so selected as grand jurors shall be made out and certified by the officers making such selection and be filed in the Clerk's office, and the Clerk shall immediately issue a venire, directed to the Sheriff of the county, commanding him to summon the persons so drawn as grand jurors to attend in court at such time as the Judge may have directed; and the Sheriff shall summon such grand jurors, and out of the number so summoned the court shall select seventeen persons to constitute the grand jury. If from any cause a sufficient number do not appear, or those who appear are excused or discharged, an additional number, sufficient to complete the grand jury, shall be selected from the jury list by the Judge and Clerk and summoned to appear in court at such time as the court may direct. *As amended, Stats. 1879, 34; 1881, 27.*

Section 8 repealed, Stats. 1893, 32. Repealing Act unconstitutional, *State v. Hartley*, 22 Nev. 342.

Who Exempt as Jurors—Fee for Exemption.

3870. SEC. 9. Upon satisfactory proof, made by affidavit or otherwise, the following named persons, and no other shall be exempted from service as grand or trial jurors: Any federal or state officer, Judge, Justice of the Peace, County Clerk, Sheriff, Constable, Assessor, Recorder, attorney-at-law, physician, minister of the gospel, telegraph operator, locomotive or stationary engineer, mail carrier, engaged in the actual carrying of the United States mail, on a regular mail route, and one-half of all members of each regularly enrolled fire company in the state, said half to be determined by the several fire companies respectively, and all officers of such fire companies, not exceeding ten for each company, and also in all cities and towns wherein there is a paid fire department, after such paid fire department shall have been organized and put in operation, all members of said paid fire department, and all persons who are now or may hereafter become members of any exempt firemen's association, society or organization within this state; but such exemption shall not extend to any member of such association, society or organization, unless prior to becoming a member of the same, such member shall have served as an active fireman, in some regularly organized fire department in this state, for the period of three years, and also, in all cities and towns in this state, wherein there are volunteer fire departments, after such volunteer departments shall have been organized and put in operation all members thereof; and also, all members thereof, who may hereafter become members of any exempt fireman's association, society or organization, within this state; but such exemption shall not extend to any member of such association, society or organization, unless prior to becoming a member of the same, such member shall have served as an active fireman in some regularly organized volunteer fire department in this state, for the period of five years; *provided*, that the entire exemption of such exempt firemen, where there is a paid fire department, shall not exceed in any one town or city, one hundred and fifty; and where there is a volunteer fire department, the entire exemption shall not exceed, in any one town or city, fifty; *and further provided*, that any person liable to grand or trial jury duty residing sixty or more miles distant from the county seat of his county, shall be exempted from service on either grand or trial juries for the

period of one year upon making affidavit to the fact that he so resides and filing the same with the Clerk of the district court of the district in which his county is situated and paying to such Clerk the sum of twenty-five dollars. Upon the receipt of such affidavit and such sum, the said Clerk shall deliver to such person a certificate stating the fact of such receipts, and thereafter, for the period of one year from the date of such payment, the name of such person shall not be placed in the jury box, nor shall such person be selected as a grand or trial juror. It shall be the duty of said Clerk, upon the receipt of said sum, to deliver the same to the County Treasurer of his county, and the said Treasurer shall immediately place the same to the credit of the general fund of said county. *As amended, Stats. 1875, 137; 1877, 176; 1881, 155; 1895, 51.*

Repealed.

(SEC. 2.) All portions of the Act of which this Act is amendatory, relative to the prescribing of bounds by the Judges of the several district courts, in their several counties, and the exemption of persons from serving on juries by payment for such exemption, are hereby repealed.

Court May Excuse Juror.

3871. SEC. 10. At any time during the term the court may, in its discretion, excuse temporarily, or for the term, any juror on account of sickness or physical disability, or serious illness or death of a member of his immediate family.

Penalty for Non-Attendance.

3872. SEC. 11. Any person summoned as provided in this Act to serve as a juror, who shall fail to attend and serve as such juror, shall, unless excused by the court, be fined in any sum not exceeding five hundred dollars, in the discretion of the court, and be imprisoned in the county jail until such fine be paid, at the rate of two dollars per day.

Per Diem and Mileage.

3873. SEC. 12. Each person summoned to serve as grand jurors, and each trial juror summoned as provided in this Act, unless said trial juror be excused by the court from serving on the day he is summoned to attend, shall receive three dollars per day for each and every day he may be in attendance, and fifteen cents per mile in traveling to and returning from court, to be paid as hereinbefore provided. *As amended, Stats. 1877, 185.*

See Secs. 2464 and 2476.

Acts Repealed.

3874. SEC. 13. An Act entitled "An Act concerning juries," approved March third, eighteen hundred and sixty-six [p. 191], and all Acts repealed by that Act, and all Acts amendatory of or supplemental thereto, are hereby repealed; also, an Act entitled "An Act concerning compensation of jurors," approved March fifth, eighteen hundred and sixty-nine [p. 138], and all Acts amendatory of or supplemental thereto, are hereby repealed.

An Act regulating the manner of drawing juries in the district courts of this state.

Approved February 20, 1885, 32.

County Commissioners to Estimate and Select.

3875. SECTION 1. The Board of County Commissioners in each county of the State of Nevada, shall, at its first meeting after the approval of this Act, and thereafter at its first regular meeting in each year, by an order duly made and entered on its minutes, estimate as nearly as possible, the number of trial jurors that will be required for attendance on the district court of said county until the next annual selection of trial jurors under this Act. The said board shall thereupon select from the qualified electors of the county, whether registered or unregistered, not exempt by law from jury duty, such number of qualified electors as

it has estimated to be necessary. The names of the electors so selected, shall be entered upon the minutes of said board, together with the occupation and place of residence of each of such electors so selected. *As amended, Stats. 1895, 51.*

Names to Be Written on Slips.

3876. SEC. 2. The names so selected shall at the same time be written on separate slips of paper, and deposited in a box, to be provided and kept for that purpose, and known as the jury box; said box, when not in use as herein provided, shall be kept securely locked by the County Clerk.

Juror Not Summoned May Be Drawn Over.

3877. SEC. 3. When a juror drawn is not summoned, or fails to appear, or after appearing is excused by the Judge from serving, his name shall be returned to the box to be drawn again. The Board of Commissioners shall not select the name of any person whose name was selected the previous year, and who actually served on the jury, unless there be not enough other suitable jurors in the county to do the required jury duty.

Manner of Drawing Juries After Box Exhausted—Open Venire, When.

3878. SEC. 4. When all the names in the jury box have been exhausted, or there are not enough therein to complete the next panel that may be drawn, the District Judge shall certify the same to the Board of County Commissioners, together with a statement of the number of additional names that will be required, and said board shall thereupon proceed and select such required number of jurors in the manner hereinbefore provided, and thereafter trial jurors may be drawn therefrom as before. Grand jurors may be selected from the qualified jurors of the county whether their names are or are not upon the list selected by the Board of Commissioners, and it shall at all times be in the discretion of the court, with the consent of all parties litigant to the action or actions to be tried thereby, either to draw the names of the jurors from the box, as in this Act provided, or to issue an open venire directed to the Sheriff, requiring him to summon, either immediately or for a day fixed, from the citizens of the county, but not from the bystanders, such number of persons having the qualifications of jurors as may be needed; the persons thus summoned shall be as competent trial jurors in all respects as if drawn from the jury box. *As amended, Stats. 1887, 121.*

TRIAL JURORS—OPEN VENIRE—DISCRETION OF COURT. The question as to the necessity of selecting additional trial jurors by an open venire is within the discretion of the district court. *State v. Angelo, 18 Nev. 425.*

An Act amendatory of and supplementary to an Act entitled "An Act concerning juries," approved March fifth, eighteen hundred and seventy-three.

Approved March 5, 1875, 139.

Discharge of Trial Jurors.

3879. SECTION 1. When at any time there shall be a larger number of trial jurors in attendance upon any court than are required for the business of the term, or for the time being, the court may excuse, temporarily, or discharge for the term, a sufficient number of those who have served longest, to reduce the panel to the number required.

An Act to exempt certain persons from duty as jurors on account of age.

Approved January 30, 1889, 26.

Persons Aged 65 Years, or Over, Exempt.

3880. SECTION 1. All persons of the age of sixty-five years, or over, are hereby exempt from serving as grand or trial jurors, and whenever it shall appear to the satisfaction of the court, by affidavit or otherwise, that a juror is over the age of sixty-five years, the court shall order said juror excused from all service as a grand or trial juror, if the juror so desires.

An Act to secure liens to mechanics and others, and to repeal all other acts in relation thereto.

1183. C. C. P.

Approved March 2, 1875, 122.

Labor or Material—Contractor, etc., Held as Owners or Agents.

3881. SECTION 1. Every person performing labor upon, or furnishing material of the value of five (5) dollars or more, to be used in the construction, alteration or repair of any building or other superstructure, railroad, tramway, toll road, canal, water ditch, flume, aqueduct or reservoir, building, bridge, fence, or any other structure, has a lien upon the same for the work or labor done or material furnished by each, respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent; and all miners, laborers and others who work or labor to the amount of five (5) dollars or more in or upon any mine, or upon any shaft, tunnel, adit, or other excavation, designed or used for the purpose of prospecting, draining or working any such mine; and all persons who shall furnish any timber or other material, of the value of five (5) dollars or more, to be used in or about any such mine, whether done or furnished at the instance of the owner of such mine or his agent, shall have, and may each respectively claim and hold, a lien upon such mine for the amount and value of the work or labor so performed, or material furnished; and every contractor, sub-contractor, architect, builder, or other persons, having charge or control of any mining claim, or any part thereof, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner, for the purposes of this chapter. *As amended, Stats. 1881, 49.*

1. **MECHANICS' LIEN LAW TO BE LIBERALLY CONSTRUED.** The mechanics' lien law is to be liberally construed so as to give lien claimants the benefits intended by the legislature. *Skyrme v. Occidental M. Co.*, 8 Nev. 219; *Hunter v. Truckee Lodge*, 14 Nev. 24; *Malter v. Falcon M. Co.*, 18 Nev. 209.

2. **FOREMAN OF MINE ENTITLED TO LIEN.** *Capron v. Strout*, 11 Nev. 304.

Liens on City Lots.

3882. SEC. 2. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Land Subject to Lien.

3883. SEC. 3. The land occupied by any building or other superstructure, railroad, tramway, toll road, canal, water ditch, flume, aqueduct, or reservoir, bridge, or fence, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

LAND NECESSARY FOR CONVENIENT USE OF REDUCTION WORKS—Evidence. *Gould v. Wise*, 1st Nev. 253.

Priority of Liens.

3884. SEC. 4. The liens provided for in this chapter are preferred to any lien, mortgage or other incumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished; also, to any lien, mortgage, or other incumbrance of which the lien holder had no notice and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished; (every mortgage or incumbrance imposed upon, or conveyance made of, property affected by the liens

herein provided for between the time when the building, improvement, structure, or work thereon was commenced, or the materials thereof were commenced, to be furnished, and the expiration of the time herein fixed in which liens therefor may be filed whatever the terms of payment may be, shall be subordinate and subject to the liens in full herein authorized, regardless of the date of filing of said liens). *As amended, Stats. 1899, 98.*

RIGHTS OF MORTGAGEE—NOTICE OF LIEN HOLDER. Lien held subordinate to the mortgage. *Capron v. Strout, 11 Nev. 304.*

Statement to Be Filed—Verification.

3885. SEC. 5. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within ~~thirty~~ ⁽⁵⁰⁾ days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or performance of any labor in a mining claim, file for record with the County Recorder of the county in which the property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person.

1. MECHANICS' LIEN, WHEN MUST BE FILED—DIFFERENT CONTRACTS. When the work is continuous, although done under different contracts, the lien is preserved by giving notice within sixty days after the work is completed. (*Skyrme v. Occidental M. Co., 8 Nev. 220, affirmed.*) *Capron v. Strout, 11 Nev. 304.*

2. MECHANICS' LIEN—When Must Be Filed. *Hunter v. Truckee Lodge, 14 Nev. 24; Lonkey v. Wells, 16 Nev. 271. Must State Terms, Time, etc. Porters v. Rec. 91 Nev. Rep. 134.*

Liens Upon Separate Buildings—Amount to Be Stated.

3886. SEC. 6. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims, or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens by judgment or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are constructed.

Record of Claim. 189 C.C. 1

3887. SEC. 7. The Recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

Limitation of Lien as to Time. 189 C.C. 2

3888. SEC. 8. No lien provided for in this chapter binds any building, mining claim, improvement, or structure for a longer period than six months after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; *provided, nevertheless,* that if there are other claims outstanding against the property, no time or credit shall be given upon the lien after the expiration of the six months in which proceedings are required to be commenced, which will tend to delay or postpone the collection of other claims or incumbrances against the property; but no lien continues in force for a longer time than two years from the time the work is completed by any agreement to give credit.

Owner Must Post Notices, or Property Will Be Responsible.

1192
C.C. 8.
3889. SEC. 9. Every building or other improvement mentioned in section one of this Act, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon said land or upon the building or other improvement situate thereon.

1. MECHANICS' LIEN—WHEN LESSEE CAN CREATE LIEN ON PROPERTY OF LESSOR. The interest of the owner of reduction works may be subjected to lien claims, notwithstanding the labor and materials have not been performed and furnished at his instance if, knowing that alterations or repairs are being made by the lessee, he fails to give notice that he will not be responsible therefor. *Gould v. Wise*, 18 Nev. 253.
2. LIABILITY OF OWNER—Written Notice Necessary to Avoid Liability. *Rosina v. Trowbridge*, 20 Nev. 105.

Recovery Upon Lien. 1193 C.C. 8.

3890. SEC. 10. The contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due to him according to the terms of his contract after deducting all claims of other parties, for work done and material furnished, as aforesaid; and in all cases where a lien shall be filed under this chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and, during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the lien, the said owner shall be entitled to deduct, from any amount due or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor, he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

Rank or Order of Liens. 1194 C.C. 8.

3891. SEC. 11. In every case in which different liens are asserted against any property, the court, in the judgment, must declare the rank of each lien or class of liens, which shall be in the following order, viz: First—All persons other than the original contractors and sub-contractors. Second—The sub-contractors. Third—The original contractors. And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank.

Claims Consolidated, When. 1195 C.C. 8.

3892. SEC. 12. Any number of persons claiming liens may join in the same action; and when separate actions are commenced the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the lien.

Exempt from Attachment. 1196 C.C. 8.

3893. SEC. 13. Whenever materials have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement.

Personal Action Not Impaired.

3894. SEC. 14. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done or material furnished, to maintain a personal action to recover such debt against the person liable therefor.

Action on Lien—Trial of—Sale of Premises.

3895. SEC. 15. Said liens may be enforced by an action in any court of competent jurisdiction, on setting out in the complaint the particulars of the demand, with a description of the premises to be charged with the lien; and at the time of filing the complaint and issuing the summons the plaintiff shall cause a notice to be published at least once a week, for three successive weeks, in one newspaper published in the county, and if there is no newspaper published in the county, then in such mode as the court may determine, notifying all persons holding or claiming liens under the provisions of this Act on said premises, to be and appear before said court on a day specified therein, and during a regular term of such court, and to exhibit then and there the proof of their said liens. On the day appointed, the court shall enter judgment according to the right of the parties, and shall, by decree, proceed to hear and determine the said claims in a summary way, or may refer the same to a referee to ascertain and report upon said liens and the amount justly due thereon; and all liens not so exhibited shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which the said premises are justly chargeable, as hereinbefore provided, the court shall cause said premises to be sold in satisfaction of said liens and costs, including costs of suit; and any party in whose favor such judgment may be rendered may cause the premises to be sold within the time and in the manner provided for sales on execution, issued out of any district court, for the sale of real estate; and if the proceeds of sale, after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the right of the several parties. In case the proceeds of such sale amount to more than the sum of said liens and the cost of sale, then the remainder shall be paid over to the owner of said property; and each party whose claim is not satisfied in the manner hereinbefore provided for, shall have personal judgment for the residue against the party legally liable for the same; *provided*, such person has been personally summoned or has appeared in the action.

1. NOTICE TO LIEN CLAIMANTS. Omission of notice not prejudicial when no other claimants shown. *Lonkey v. Wells*, 16 Nev. 271.

ITEMS OF ACCOUNT NOT NECESSARY. *Id.*

2. OMISSIONS IN NOTICE—PLEADINGS—EVIDENCE. The omissions in the notice and claim, of a mechanic's lien, as recorded, cannot, in essential particulars, be aided by any averments in the complaint. *On the record of the county of Humboldt*, 7, 209.

County.

SEC. 5. Said bonds shall be sold at not less than par value, and all moneys received from the sale thereof shall be paid into the county treasury of Humboldt County, and the County Treasurer of said Humboldt County is hereby required to receive and safely keep the same in a fund to be known as the

8 Nev. 219.
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COMPLAINT TO FORECLOSE MECHANICS' LIENS. The sufficiency of a complaint for foreclosure of mechanics' liens is to be determined by the statute; and if there is a substantial compliance with the requirements of the statute it is sufficient. *Skyrme v. Occidental M. Co.*, 8 Nev. 220.

6. MECHANICS' LIENS—NON-LIENABLE CHARGES IN STATEMENT. The mere fact that a lien claimant has included in his statement charges for which the law allows no lien will not defeat that portion for which he is entitled to a lien, when the charges are separately stated. *Maynard v. Ivey*, 21 Nev. 241.

SUFFICIENCY OF STATEMENT. *Id.*

7. FORECLOSURE OF MECHANIC'S LIEN—Pleading. *Dickson v. Corbett*, 11 Nev. 277.

AGENCY, WHEN MUST BE DENIED—Description of Premises. *Id.*

8. PLEADINGS TO FORECLOSE MECHANIC'S LIEN. *Elliot v. Ivers*, 6 Nev. 287.

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DISMISSAL OF ACTION BY PLAINTIFF NOT TO AFFECT INTERVENORS—Notice of Foreclosure Suit. *Id.*

9. FORECLOSURE OF MECHANIC'S LIEN. *Arrington v. Wittenberg*, 11 Nev. 285.

10. CONTRACT OF INDEMNITY—Mechanics' Liens—Failure to Make Payments to Contractors—Release of Sureties. *Carson Opera House v. Miller*, 16 Nev. 327.

Satisfaction and Discharge of Lien.

3896. SEC. 16. The claimant of any such lien filed as aforesaid, on the payment of the amount thereof, together with the costs incurred and the acknowledgment of satisfaction, shall, at the request of any person interested in the property charged therewith, enter or cause to be entered an acknowledgment of satisfaction of the same [of] record within ten days from the request, and for failure of the claimant to enter satisfaction within the time, shall forfeit and pay to the person making the request the sum of twenty dollars per day until the same shall be entered, to be recovered in the same manner as other debts.

Liens May Be Assigned.

3897. SEC. 17. Two or more creditors of the same class may assign their claims, duly verified, to any other creditor or person of the same class, and the assignee may commence and prosecute the action upon them all in his own name. All liens under this Act shall be assignable as any other chose in action.

Liens by Wood Choppers, etc.—Proceedings.

3898. SEC. 18. All persons who shall perform work or labor upon any tract or tracts of lands, by cutting or cording the wood or timber growing, or being thereon, shall have and may each, respectively, claim and hold a lien upon the wood or timber so cut or corded, for the amount in value of the work or labor so performed, by retaining possession of the same, until the whole amount due for such work or labor shall have been paid; *provided*, that any lien claimed and held, as aforesaid, shall be deemed to be waived, unless an action be brought in some court of competent jurisdiction, for the recovery of the amount for which such lien is claimed as security, within sixty days after such wood or timber shall have been taken into possession by the claimant; and the fact that such lien is claimed, shall be set out in the complaint, together with a description of, and the number of cords of wood, or feet of timber, retained in possession by the claimant. If the judgment be for the plaintiff in such action, the execution shall direct the same, with costs, to be satisfied out of the wood or timber so retained, if the same shall be sufficient; if not, then the balance to be satisfied out of any other property of the defendant in the same manner provided by law. In all cases where two or more persons are jointly engaged under a contract or employment, in cutting or cording wood or timber, on any tract or tracts of land in this state, any one of such persons may claim, have, hold and enforce a lien, for all the work or labor performed, as in this section provided, and for the benefit of the other persons jointly interested with him; in such cases, in all actions brought under the provisions of this section, it shall be the duty of the court, in case the judgment shall be for the plaintiff, to designate in such judgment the amount due each of the persons interested. Possession of wood or timber within the meaning of this section shall be deemed to be in the person or persons cutting or cording wood or timber, for the purposes of this Act, from the time of cutting or cording the same; and shall not be deemed to have been released or yielded by the person or persons performing the work or labor, as herein provided, except such person or persons, by word or act clearly and distinctly declare, or evidence his or their intention to so release or yield possession; and in cases of a joint contract or employment, the possession of any part of the wood or timber, cut or corded, shall not be deemed yielded or released without the assent of all the persons cutting or cording the same, manifested as in this section provided. Justices of the Peace shall have jurisdiction of all actions under the provisions of this Act, when the amount claimed does not exceed three hundred dollars. *As amended, Stats. 1879, 52.*

Foundrymen, etc., Liens Of.

3899. SEC. 19. All foundrymen and boilermakers, and all persons performing labor, or furnishing machinery, or boilers, or castings, or other materials for the construction, or repairing, or carrying on of any mill, manufactory, or hoisting works, shall have a lien on such mill, manufactory, or hoisting works, for such work or labor done on such machinery, or boiler, or castings, or other material furnished by each respectively; and all the provisions of this Act respecting the mode of filing, recording, securing, and enforcing the liens of contractors, sub-contractors, journeymen, laborers, and others, and the word "superstructure," wherever it occurs in this Act, shall be applicable to the provisions of this section of this Act.

Repeal.

3900. SEC. 20. An Act of the legislature entitled "An Act to secure liens to mechanics and others, and to repeal all other acts in relation thereto," approved March fourth, eighteen hundred and seventy-one, and all other Acts and parts of Acts, inconsistent with the provisions of this Act, are hereby repealed.

An Act supplementary to an Act entitled "An Act to secure liens to mechanics and others, and to repeal all other Acts in relation thereto," approved March second, eighteen hundred and seventy-five.

Approved February 24, 1877, 90.

Preferred Lien on Ore.

3901. SECTION 1. Where ore is delivered to a custom mill or reduction works, and either sold to said mill or reduction works, or worked at a percentage, the party or parties so furnishing ore to mill or reduction works shall have a preferred lien upon the bullion product, and upon the ore not reduced, as against attachment and other creditors.

An Act to protect the wages of labor.

Approved February 21, 1873, 76.

Wages Preferred Claims.

3902. SECTION 1. That in all assignments of property, whether real or personal, which shall hereafter be made by any person or chartered company or corporation, or by any person or persons, owning or leasing real or personal property, to trustees or assignees on account of inability at the time of the assignment to pay his, her, or their debts, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers, employed by such person or persons, or chartered company or corporation, shall be held and deemed preferred claims, and paid by such trustees or assignees, before any other creditor or creditors of the assignor; *provided*, that the claims of each miner, mechanic, salesman, servant, clerk, or laborer thus preferred, shall not exceed in value two hundred dollars of gold coin of the United States, and the services shall have been rendered or labor performed within ninety days next preceding said assignment.

Claims for Wages Against Estates.

3903. SEC. 2. That in all cases of the death of any employer or employers, the wages of each miner, mechanic, salesman, servant, clerk, and laborer, for services rendered, or labor performed, within ninety days next preceding the death of the employer, shall rank after the funeral expenses of the deceased, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and be paid pro rata before all other claims against the estate of the deceased person or persons; *provided*, this Act shall in no way affect the homestead or other property exempted by law from forced sale, or any mortgage or lien lawfully obtained on the property of the deceased person before his or her death.

In Cases of Attachments, etc.—Notice—If Claim Disputed—Action Thereon—Claims Preferred.

3904. SEC. 3. In all cases of execution, attachments and writs of a similar nature against the property of any person or persons, or chartered company or corporation, it shall be lawful for such miner, mechanic, salesman, servant, clerk and laborer to give notice of their claim or claims, and the amount thereof, duly certified and sworn to by the creditor or creditors making the claim to the officer executing either of such writs, at any time before the actual sale of property levied upon; the creditor or creditors making the claim shall at the same time give notice in writing to the creditor or creditors at whose instance the property has been levied upon, or his or their attorney, of their said claim or claims, and the amount thereof duly certified and sworn to by such claimant or claimants; a copy of said notice shall also be served upon the debtor, if he be found within the county where the property levied upon is situated; *provided*, that if the debtor cannot be found within the county where the property levied upon is situated, then said notice may be served upon the officer executing either of such writs in lieu of said debtor. Upon the filing in the court where the action or actions against the debtor is, or are pending, of an affidavit of the claimant or claimants, showing his or their compliance with the foregoing provisions of this section, the officer executing either of said writs shall pay to such miners, mechanics, salesmen, servants, clerks or laborers, out of the proceeds of the sale, the amount each is justly and legally entitled to receive for services rendered, within ninety days next preceding the levy of the writ of execution, attachment, or other writ, not exceeding two hundred dollars in gold coin of the United States; *provided*, that either the creditor or debtor may dispute the claim of any person seeking and claiming preference under this section, and in such case the party or parties disputing such claim shall serve a written notice that they dispute such claim upon the claimant or claimants, and upon the officer executing such writs, within five days from the time of service upon such creditor or debtor of the notice of the claim by the claimant seeking preference, as hereinbefore provided for. Within ten days from the time of the service last provided for, the claimant or claimants shall commence an action in any court of competent jurisdiction against the debtor, and the person or persons disputing his or their claim, or claims, for the recovery thereof, and shall prosecute such action with due diligence, or be forever barred from any claim of priority payment thereof; but in case action is rendered necessary by the Act as aforesaid, by either debtor or creditor, and judgment shall be had for said claim, or any part thereof, carrying costs, the costs attending the prosecution of said action, and legally taxable therein, shall likewise be a preferred claim, with the same rank as the original claim; *and, provided further*, if the amount of assets, after deducting costs of levy and sale, shall not be adequate to the payment of all the preferred claims of this class, they shall be paid pro rata out of the money hereby made applicable thereto; *and, provided further*, that nothing in this Act contained shall be construed to affect any homestead claims, mortgage, or lien of any description, created and existing before the claim of such laborer accrued. *As amended, Stats. 1881, 56.*

ACT TO PROTECT THE WAGES OF LABOR—SECTION 3 CONSTRUED—NOTICE, TO WHOM GIVEN. In construing Section 3 of the Act to protect the wages of labor: *Held*, that notice of the laborer's claim must be given to the debtor and creditor as well as to the Sheriff. *Coccia v. Kyle*, 15 Nev. 394.

IDEM—TIME FOR COMMENCEMENT OF ACTION UPON DISPUTED CLAIM. The action upon the claim, if disputed, must be commenced within ten days after the presentation of the claim to the officer who levied the writ. *Id.*

An Act to secure liens to ranchmen and other persons.

Approved February 14, 1866, 65.

Lien Upon Animals—Sales—Fees.

3905. SECTION 1. Any ranchman, or other person or persons, keeping corrals,

livery or feed stables, or furnishing hay, grain, pasture, or otherwise boarding any horse or horses, mule or mules, ox or oxen, or other animal or animals, shall have a lien upon and retain possession of the same, or a sufficient number thereof, until all reasonable charges are paid; or suit can be brought and judgment obtained for the amount of such charges, and execution issued and levied on said property; *provided*, nothing in this Act shall be so construed as to include any debt other than for the boarding, keeping, or pasture of such animal or animals, together with costs of suit and sale. Sales of such animal or animals shall be made as other sales of personal property under execution. The officer making such sale shall be entitled to such fees for his services as are allowed by law in cases of other sales of personal property.

Surplus Paid Over.

3906. SEC. 2. After paying all charges, together with costs of suit and sale, the remainder, if there be any, shall be paid to the owner or owners of such animal or animals, or, in case such owner or owners is or are out of the state, or cannot be found, to the Justice of the Peace before whom, or the Clerk of the Court in which, judgment is rendered. If said money is not called for by the owner or owners thereof within six months, said Justice or Clerk shall pay the same to the County Treasurer of his county for school purposes.

Penalty for Taking Animal Away.

3907. SEC. 3. Any person or persons who shall take and drive away any such animal or animals, while in the possession of such ranchman or person boarding the same, without having first paid all reasonable charges due thereon, and against the consent of such ranchman or other person, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court having jurisdiction of the same, shall be fined in any sum not exceeding the value of the stock so taken or driven away, nor less than fifty dollars; *provided*, that nothing herein contained shall be so construed as to release the owner or owners of said property from the amount of any lien there may be due thereon under and by virtue of this Act.

STATUTORY LIEN FOR KEEPING ANIMALS LOST BY SURRENDER OF POSSESSION. Where a stable keeper boarded a team of horses, but allowed them every day to be driven away to work, and on one occasion after being so driven away they were not returned: *Held*, that though he might under the statute have retained possession of the horses, and insisted upon his lien, yet, having allowed them to be driven away, he relinquished possession and thereby lost his right of lien. *Cardinal v. Edwards*, 5 Nev. 36; *Estee v. Cooke*, 12 Nev. 276.

FIXING FUTURE TIME OF PAYMENT DESTROYS LIEN. The fixing of a future time of payment for the keeping or boarding of animals, such as an agreement to pay on the first of each month, destroys the lien contemplated by the statute of 1866. *Id.*

An Act for the relief of persons imprisoned on civil process.

Approved December 19, 1862, 95.

May Be Released.

3908. SECTION 1. Every person confined in jail on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

Application for Release.

3909. SEC. 2. Such person shall cause a notice, in writing, to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the District or Probate Judge of the county in which such person may be confined for the purpose of obtaining a discharge from his imprisonment.

Notice to Plaintiff.

3910. SEC. 3. Such notice shall be served upon the plaintiff, or his agent or attorney, one day at least before the hearing of the application. If the plaintiff

be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

Examination of Prisoner.

3911. SEC. 4. At the time and place specified in the notice, such person shall be taken before such Judge, who shall examine him, under oath, concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, and such Judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditors.

Oath Required, Form Of.

3912. SEC. 5. If, upon examination, the Judge be satisfied that the prisoner is entitled to his discharge, such Judge shall administer to him the following oath: "I,-----, do solemnly swear, or affirm, that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of with design to secure the same to my use, or to defraud my creditors."

Order of Discharge.

3913. SEC. 6. After administering the oath, the Judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer, upon service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

Renewal of Application for Discharge.

3914. SEC. 7. If such Judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceeding shall thereupon be had.

Does Not Vitiolate Judgment.

3915. SEC. 8. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt; but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

Plaintiff May Order Discharge.

3916. SEC. 9. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Ex Parte Bergman, 18 Nev. 331.

Expenses of Imprisonment, Amount and How Paid.

3917. SEC. 10. Whenever a person is committed to jail on a judgment recovered in a civil action, the creditor, his agent, or attorney, shall advance to the Jailer immediately upon such commitment, sufficient money to pay for the support of said prisoner for at least two weeks, at the rate of two dollars and a half per day, and in case the money should not be so advanced, the Jailer shall forthwith discharge such prisoner from custody, and such discharge shall be a bar against imprisonment for the same debt. At the expiration of such two weeks, should such creditor refuse to advance a like sum, the prisoner will be discharged as above provided, and with the same effect.

SUFFICIENCY OF EVIDENCE FOR DISCHARGE. Deal v. Schlomberg, 20 Nev. 330.

An Act to regulate the condemnation of property for public use.

Approved February 27, 1897, 26.

Who May Condemn Property.

3918. SECTION 1. Any person, corporation, civil, municipal, or political organ-

ization, by law authorized so to do, may condemn any property, or interest therein, which may be necessary for public use, in the manner only provided for by this Act.

Must File Notice.

3919. SEC. 2. The plaintiff seeking condemnation shall commence an action in the district court of the county in which the property sought to be condemned, or some part thereof, is situated, in the same manner as other civil actions are commenced therein, and shall file with the Recorder of said county, a notice of the pending of the said action.

Complaint, What to Show.

3920. SEC. 3. The complaint shall describe the property, or interest therein, sought to be condemned, with reasonable certainty, the use for which it is to be acquired, that the use is public and necessary, and shall contain the names of three competent and disinterested persons, residents and householders of the county, as jurors on the part of the plaintiff.

All Persons Having Interest to Be Defendants.

3921. SEC. 4. All persons appearing of record as having or claiming any right, title or interest, in or to the property sought to be condemned, or any part thereof, or in possession, shall be made defendants and may all be joined as defendants in one action, whether their rights, title, interest, claims or possessions extend to the whole or a part of the property sought to be condemned.

Provisions of Civil Practice Act Applicable.

3922. SEC. 5. All the provisions of an Act entitled "An Act to regulate proceedings in civil cases in the courts of justice of this state, and to repeal all other Acts in relation thereto," approved March 8, 1869, and all Acts and parts of Acts amendatory thereof, or supplemental thereto, are made applicable to and shall control said action, except when inconsistent or in conflict with the provisions of this Act.

Answer, What to Set Forth—Jurors to Be Named.

3923. SEC. 6. The defendants may answer jointly or separately, but the answer shall set forth clearly and concisely the nature and extent of the right, title, interest, claim and possession of each defendant in or to the property or a part thereof, sought to be condemned, and the amount which it is claimed would be a just compensation for the taking thereof. It shall also contain the names of three competent and disinterested persons, residents and householders of said county, as jurors on the part of the defendant. A failure on the part of any party to the action to so name jurors shall be a waiver of the right to select names for any of them. The averments of the answer shall be deemed controverted by the plaintiff.

Five Jurors to Try the Action—How Appointed.

3924. SEC. 7. On or before the trial of said action the Judge of said court shall name five competent and disinterested persons, residents and householders of said county to act as jurymen in said action, two of whom shall be persons named by the plaintiff in its complaint, if any are so named, and two shall be persons named by the defendants or some of them in the answer, if any are so named. If any juror named by a party and selected, is disqualified, incompetent, or unable to act, he shall be excused, and his place shall be filled by a juror selected from the names theretofore or then to be selected by the person who named the juror who was excused. Said five jurors, when so selected, shall constitute the jury to hear said cause and find the amount which shall be just compensation to the owners for the property, or interest therein, sought to be condemned; and their findings thereon shall have the same force and effect as a finding of the amount of damages by the general verdict of a jury in an action for damages for the conversion of specific personal property. All other issues shall be tried by the court.

Burden of Proof—What Jury to Take Into Consideration.

3925. SEC. 8. Upon the trial of said action the defendant shall have the burden of proof as to what is just compensation, and shall have the right to open and close the argument before the jury. In ascertaining and assessing such compensation the jury shall take into consideration, and make allowance for, any benefit or advantage that in its opinion will accrue to such person, or persons, by reason of the use or improvement of said property as proposed by the plaintiff. A view of the property by the jurors shall be had upon the motion of either party or order of the Judge. Three of said jurors may find a verdict.

Judgment Entered—Costs—Jury Fees.

3926. SEC. 9. Judgment shall be entered upon the verdict, by the court, upon motion, for the amount so found, and may order the money to be apportioned amongst the defendants according to the rights of the several parties, as shown by the proofs. Costs may be awarded, or apportioned, as the court may direct. For their services the jurors shall receive three dollars per day from the plaintiff, but no mileage shall be allowed to the said jurors.

Plaintiff to Pay Over Amount to Clerk.

3927. SEC. 10. At any time after the rendition of the verdict the plaintiff may pay to the Clerk of said court the amount of the verdict and such costs as are adjudged against it, and said payment shall be deemed and taken as a payment to the owners of the said property and shall be as effectual for all purposes whatsoever as if the said sum of money had been personally paid to each and all of the persons entitled thereto.

When to Become Property of Plaintiff.

3928. SEC. 11. Upon said payment being made and a judgment of condemnation entered in said action, the real estate, or right, title or interest therein described in the complaint, and for which compensation was awarded by said verdict, shall be and become the property of said plaintiff for the purposes for which it was condemned, and shall be deemed to be acquired and appropriated for such public use, and any time after such payment is made and judgment entered the plaintiff shall have the right to enter upon and take possession of the property so condemned, and oust and eject therefrom the defendants and any and all persons claiming by or through them, or either of them, subsequent to the filing of said notice with the County Recorder; and said plaintiff may recover possession of said premises and be put into the possession thereof by legal process in the same manner and with the same force and effect as in an action for the recovery of the possession of specific real estate.

When Right of Motion for New Trial or Appeal Deemed Waived.

3929. SEC. 12. The payment of said sums to said Clerk shall not affect the right of any party to move for a new trial or to appeal the said action, but the receipt of any part of said sum by any defendant, either in person or by attorney, shall be deemed a waiver by said defendant of the right to move for a new trial or to take an appeal in said action, and no such payment shall be made by the Clerk to any defendant who has given notice of a motion for a new trial or of an appeal, unless upon the order of the Judge of said court. Neither the pendency nor the granting of a new trial, or of an appeal, shall operate as a stay of said judgment, or execution thereon, or prevent the plaintiff from securing and maintaining possession of the property so condemned.

Disposal of Money on New Trial or Appeal.

3930. SEC. 13. If a new trial is granted, or on appeal the judgment is modified, reversed, or affirmed, the money so paid by the plaintiff and held by the Clerk shall be paid as the court may direct, and if it is finally determined that the sum so paid and received is more or less than what was jointly due, the party entitled thereto shall have a judgment against the adverse party for such excess of deficiency.

An Act for the relief of insolvent debtors and protection of creditors.

Approved March 3, 1881, 124.

Insolvent Debtors.

3930½. SECTION 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real, personal, or mixed, for the benefit of all his creditors, and upon compliance with the several provisions of this Act; *provided*, said assignment be made in good faith and without fraud. The district court only shall have jurisdiction in the subject matter herein contained.

Debtor to Petition Judge.

3931. SEC. 2. Any person owing debts to an amount exceeding the sum of five hundred (\$500) dollars, and who shall have resided in the county where such application is made for at least one year immediately preceding such application, shall petition the Judge of the district court having jurisdiction within the place of his residence, in which petition he shall briefly state the circumstances which compel him to surrender his property to his creditors, and shall conclude with a prayer to make a cession of his estate and to be discharged from his debt, in pursuance with the provisions of this Act.

To Annex Schedule to Petition.

3932. SEC. 3. The debtor shall annex to his petition his schedule, that is to say, a specified statement of his affairs, containing a list of the debts and liabilities owing by him, giving the name of his creditors, if known, the amount due to each creditor, the cause and nature of such indebtedness, when and where it accrued, and a statement of any existing judgment, mortgage, collateral, or other securities for the payment of any such debt. Said schedule shall also contain a full, complete, and perfect inventory of all his property, real, personal, and mixed, of all choses in action, debts due or to become due, and all moneys in hand of or belonging to such insolvent. Said schedule shall also contain a full statement of all incumbrances existing upon the property of the insolvent. The said debtor shall, as nearly as possible, estimate the property by him surrendered, and set it forth in the schedule at its true cash value.

Schedule to Be Sworn To—Form of Oath.

3933. SEC. 4. The said schedule shall be signed by the debtor, and be by him sworn to before the Judge having jurisdiction of the failure, or in the event of his absence from the county, before the Clerk of the Court, in the following words, to wit: "I, A. B., do, in the presence of Almighty God, truly and solemnly swear that the schedule now delivered by me, doth contain a full, perfect, and true discovery of all the estate, real, personal, and mixed, goods and effects to me in any way belonging, all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or any other person or persons in trust for me; that I have no lands, money, or estate, reversion or expectancy beside that set forth in my schedule; that I have, in no instance, created or acknowledged a debt for a greater sum than I honestly and truly owed; that I have not, directly or indirectly, sold, or otherwise disposed of in trust, or concealed, any part of my property, effects or contracts, that I have not, in any way, compounded with my creditors, whereby to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted, in any manner whatsoever, so help me God."

Order Upon Creditors.

3934. SEC. 5. The Judge to whom such application shall be made, shall make an order requiring all the creditors of such insolvent to show cause, if they can, why an assignment of the insolvent estate should not be made, and he be

discharged from his debts. Said schedule being signed and sworn to by the petitioner, the Judge shall certify to the same, and cause it and the petition to be filed in the office of the Clerk of the Court, in the county where the petitioner resided at the time of making the application, there to remain for the information of the creditors.

Exempted Property.

3935. SEC. 6. The insolvent debtor, on the surrender of his property, shall include and set forth in his schedule, his whole estate, and all such property as may by law be exempt on execution from seizure and forced sale; and it shall be the duty of the Judge having jurisdiction of the failure to exempt and set apart for the use and benefit of said insolvent such real and personal property as he is by law authorized to retain to his own use, or that of his family.

To Deliver All Books, etc.

3936. SEC. 7. The insolvent shall, at the time of making his application, deliver to the court all the commercial or other books he may have kept, all vouchers, notes, bonds, bills, securities, or other evidences of debt, in any manner relating to or having any bearing upon or connected with his estate, and all such books, papers and securities shall be deposited in the Clerk's office of the said court, and the Clerk shall hand them over to the assignee who may be appointed.

Meeting of Creditors.

3937. SEC. 8. The Judge granting the order for a meeting of the creditors shall direct the Clerk to issue a notice calling the creditors of the insolvent to be and appear on a day, not less than thirty days from the date of the order, before said Judge, at chambers, in open court, to show cause why the prayer of the insolvent should not be granted. Such notice shall be served upon the creditors of the insolvent by depositing a copy of the same in the postoffice, postage prepaid, directed to the said creditors at their places of residence respectively, and shall be so deposited at least thirty days before the day on which the said creditors are required to appear, and in addition thereto the said notice shall be published at least thirty days in a newspaper, to be designated by the Judge, printed in the county in which application is made, if there be one; if there be none, then in a newspaper published nearest to the county seat in an adjoining county.

Property Taken by Sheriff.

3938. SEC. 9. At the time of granting the order for a meeting of the creditors, the Judge shall make an order, directed to the Sheriff of the county wherein such application is made, directing him to take into his custody all the property of the insolvent, except his books, vouchers, papers and securities; excepting, also, any and all such property as may have been set apart by said Judge for the use and benefit of the insolvent and his family, as provided in section six of this Act, and the said Sheriff shall immediately take and retain in his possession all the property of the said insolvent until an assignee shall have been chosen, when the same shall be delivered by him to the said assignee. *As amended, Stats. 1885, 29.*

Proceedings Stayed.

3939. SEC. 10. When the debtor shall have filed the petition and schedule as provided for in the Act to which this is amendatory, all proceedings against him shall be stayed. *As amended, Stats. 1887, 110.*

Assignee, Creditors to Appoint.

3940. SEC. 11. At the meeting of creditors, the said creditors having certified on oath that their respective claims are legitimate and true, shall proceed to the appointment of an assignee. In appointing assignees the opinion of the majority of said creditors in amount shall prevail. At such meeting any creditor may be represented by his duly authorized agent or attorney in fact.

Judge to Confirm.

3941. SEC. 12. Such appointment of the assignee shall be confirmed by the Judge, who shall make and enter an order to that effect.

Bond of Assignee.

3942. SEC. 13. The Judge shall require from the assignee a bond with one or more good and sufficient sureties, conditioned for the faithful performance of the duties devolving upon said assignee. The amount of such bond shall be determined by the majority of creditors. Should the creditors fail to determine the same, the amount of said bond shall be fixed by the Judge of the court having jurisdiction of the proceedings.

Assignee to Sell Property—Notice, etc.

3943. SEC. 14. The assignee shall apply by petition to the Judge, who shall have ordered a meeting of the creditors, to be authorized to sell at public auction, and to the best and highest bidder for cash, all the insolvent debtor's property, of whatsoever nature or kind, and said assignee shall give at least twenty days' public notice by publication in a newspaper published in the county of all sales of the property of said insolvent, giving at the same time a full description of the property to be disposed of; *provided, however*, that if any of the property surrendered be of a perishable nature, the assignee shall be authorized to sell the same, on giving at least five days' notice of such sale by publication in a newspaper published within the county.

Assignee to Distribute Funds.

3944. SEC. 15. All funds coming into the hands of the assignee out of the estate of an insolvent shall remain inviolable, and shall never be loaned, used, or mixed with the personal affairs of the assignee. A distribution of the proceeds of the property of the insolvent shall be made by the assignee agreeably to the direction of the court. Said assignee may sue and be sued, either as plaintiffs or defendants, in everything which respects the rights and actions which may belong to the insolvent, or which may concern the mass of the creditors. All suits brought against the insolvent, prior to his surrender of property, before the courts of other counties, shall be transferred to the court having jurisdiction in the county in which said insolvent shall have presented his schedule, and may be continued on motion and notice against his assignee.

Assignee to Make Statement of Dividends.

3945. SEC. 16. Whenever a dividend shall be declared, the assignee shall make out a statement containing the names of the several creditors, mentioning the sums which are due them respectively. And the said statement shall, besides, contain the pro rata sums to be divided among all the creditors; said assignee shall deposit said statement in the Clerk's office of the court, who shall order that notice be given to the creditors, in the same manner as for the meeting, that they show cause, within fifteen days next following the publication, why the said statement should not be accepted, and the distribution made agreeable to its contents. Two or more creditors may, at any time, make a motion to know if the assignee has funds in his hands, and the said assignee shall be required to present his accounts, and if he has funds, he distribute them without delay.

Assignee May Be Removed.

3946. SEC. 17. Should the assignee refuse or neglect to render his account, as required by the preceding section, or to pay over a dividend when he shall have, in the opinion of the court, sufficient funds for that purpose in his hands, the court shall immediately discharge such assignee from his trust, and shall have power to appoint another in his place. The assignee so discharged shall deliver to the one so appointed by the court all the funds, property, books, vouchers and securities belonging to the insolvent, without charging any commission or expenses thereon, and shall also be condemned to pay the new assignee,

for the benefit of the mass of the creditors, twenty per cent in addition to the amount of funds in his hands.

Judge May Appoint Sheriff Assignee, When.

3947. SEC. 18. If on the day appointed for the first meeting of creditors, the creditors, although duly summoned, do not attend, or refuse to appoint an assignee, it shall be lawful for the Judge before whom the said meeting may take place, to appoint the Sheriff of the county such assignee, with full power as other assignees, and for the faithful performance of said trust he shall be responsible on his official bond.

Fees of Assignee.

3948. SEC. 19. The assignee shall be entitled to charge, and receive, for his services, to wit: Eight per centum upon a sum not exceeding ten thousand (\$10,000) dollars; five per centum upon sums above ten thousand (\$10,000) dollars and not exceeding thirty thousand (\$30,000) dollars; three per centum upon all sums above thirty thousand (\$30,000) dollars; *provided*, that said commission be allowed only on such net sums of money as shall actually come to his hands or be distributed by him; the mass of creditors shall in no manner be liable for fees of counsel of the insolvent debtor in conducting the surrender of the property.

Creditor May Oppose Assignment.

3949. SEC. 20. If, after the appointment of said assignee, any one of the creditors of the insolvent debtor should deem necessary to oppose such assignment, on the ground of some fraud having been committed by the insolvent debtor, or of the appointment not having been legally made, he shall, within thirty days next following the appointment of said assignee, lay before the court which has already taken cognizance of the case, his written opposition, stating specifically the several facts of nullity of the said appointment, or of the fraud by him alleged against the insolvent debtor, whereupon, in case of accusation of fraud after having received the said insolvent's answer, the court shall order a jury to be summoned of not less than six men, to be summoned in the same manner as juries are summoned in the district court, for the purpose of deciding on the said accusation.

Proof Required.

3950. SEC. 21. On the day or at the term appointed in such order, or any subsequent day or term, the court shall proceed to hear the proofs and allegations of the parties, and before any other proceedings be had shall require proof of the mailing and publication of the notice as herein provided.

Creditor May Question on Oath.

3951. SEC. 22. Upon such accusation of fraud the creditor who shall have brought the same shall have the right to interrogate the insolvent debtor on oath, and put to him such written questions as to the state of his affairs and the several transactions in which he may have been engaged anterior to his failure, as he may think proper, and the insolvent shall answer in writing to the said interrogatories, in a pertinent and distinct manner, and every equivocal answer on his part shall be construed against him.

Debtor Guilty of Fraud.

3952. SEC. 23. If the jury summoned for the purpose of deciding on the accusation of fraud brought against such insolvent debtor declare in their verdict that said insolvent has been guilty of fraud, the said debtor shall forever be deprived of the benefit of the laws passed for the relief of insolvent debtors in this state.

How Debtor Released.

3953. SEC. 24. If the accusation of fraud brought against the debtor is

declared to be ill-founded, or if no opposition be made within the time herein provided, the said debtor having in all things complied with the provisions of this Act, the said debtor shall be released and fully discharged from any and all debts until then contracted and contracted after the passage of this Act, and from any judicial proceedings relative to the same; *provided always*, that said insolvent debtor shall be released and discharged only from such debts and liabilities as he shall have set forth and named in his schedule; *and, provided further*, that no discharge shall be granted unless the said debtor shall surrender property, the cash value of which, over and above the property exempt by law and set apart by the court, shall amount to at least fifty per centum of the amount of his liabilities, unless three-fourths in number of his creditors, and one-half in amount, consent in writing to his discharge. *As amended, Stats. 1883, 94; 1887, 94.*

Debtor Guilty of Fraud.

3954. SEC. 25. Any insolvent debtor who shall be found guilty of fraud, as aforesaid, shall forever be deemed incapable of holding any office of trust or profit under the government of this state, shall be liable to a criminal prosecution, and if convicted of fraud he shall be sentenced by the court to suffer imprisonment at hard labor in the state prison for a term of not less than six months nor more than two years.

In Case of Emergency.

3955. SEC. 26. If the Judge before whom the accusation of fraud, or opposition to the appointment of the assignee is made, thinks that the interest of the mass of creditors of the insolvent may suffer by a delay of the approval of the appointment of the assignee, it shall be lawful for the said Judge, all opposition notwithstanding, to approve previously the said appointment, if he finds that it has been made agreeably to law.

Who Considered Fraudulent Bankrupt.

3956. SEC. 27. That all persons shall be considered as fraudulent bankrupts who shall be convicted of having concealed their property with the intention to keep it from their creditors, as also those who shall be convicted of having concealed or altered their books or papers with the same intention.

Fraudulent Bankrupt.

3957. SEC. 28. That every insolvent debtor shall also be considered as a fraudulent bankrupt who shall be convicted of having passed sham deeds for the purpose of conveying the whole or any part of his property, and depriving his creditors thereof, or of having knowingly omitted to declare any of his property, rights or claims in his schedule, or of having purloined his books or any of them, or having altered, changed, or made them anew, with an intent to defraud his creditors, or of having alienated, mortgaged or pledged any of his property, with intent to defraud or prejudice his creditors; and any sale, mortgage or alienation of any property of the debtor made by him within a month preceding the filing of a petition in insolvency, and made with intent to give a preference to one or more of his creditors, shall be void. *As amended, Stats. 1883, 94.*

Debarred from Benefits of Act.

3958. SEC. 29. If any debtor shall be convicted of having, at any time within three months next preceding his failure, sold, engaged, or mortgaged any of his goods and effects, or of having otherwise assigned, transferred, or disposed of the same, or any part thereof, or confessed judgment in order to give a preference to one or more of his creditors over the others, whereby to receive any advantage in anticipation of his failure to the prejudice of his creditors, he shall be debarred the benefit of this Act.

Certain Parties Denied Benefits.

3959. SEC. 30. All insolvent debtors owing, or accountable in any manner,

for public funds or property, of whatever nature or kind, all unfaithful depositaries, all such as refuse or neglect to pay up all funds received by them as bankers, brokers, commission merchants, or for money, goods, or effects, received by them in a fiduciary capacity, shall be denied the benefits of this Act.

When Denied Benefits of Act.

3960. SEC. 31. If, after the presentation of his petition, the insolvent shall sell, or in any manner transfer or assign, any of his property, or collect any debts due him, and shall not give a just and true account of the property so sold or transferred, and the moneys so collected, and pay the same over to the assignee within ten days after his appointment, said debtor shall not receive the benefit of this Act.

Concealing Property.

3961. SEC. 32. Whenever any insolvent debtor has had the benefit of this Act, if thereafter at any time it is made to appear that he has concealed any part of his property or estate, or given a false schedule, or committed any fraud under the provisions of this Act, it is hereby declared that he has forfeited all benefit and advantage which he would otherwise have had by virtue of this Act, and he cannot avail himself of any of its provisions in bar to any claim that may be instituted against him.

Application of Act.

3962. SEC. 33. No person can apply for or receive the benefit of this Act through an agent or attorney in fact.

Property Cannot Be Seized.

3963. SEC. 34. From and after the filing of the petition by the insolvent debtor, all property of such insolvent shall be fully vested in his assignee for the benefit of his creditors, and shall not be liable to be seized, attached, taken, or levied on by virtue of any execution issued against the property of said insolvent, and the assignee who may be appointed shall take possession of and be entitled to claim and recover all the said property, and to administer and sell the same as herein provided.

Cannot Receive Benefits of Act, When.

3964. SEC. 35. In case the debtor who applies for the benefits of this Act should already have received the benefit of this Act, he shall not be entitled to his discharge unless the property surrendered by him amounts to at least fifty per centum of his liabilities, except that three-fourths of his creditors in number and amount consent thereto in writing.

Bona Fide Lien to Hold Good.

3965. SEC. 36. All legal mortgages and liens, bona fide, existing on such property at the time of the surrender, as aforesaid, shall remain good and valid, and may be enforced in the same manner, due notice being given to the assignee, as though no such surrender had been made. *As amended, Stats. 1885, 79.*

Debarred, When.

3966. SEC. 37. Any failure on the part of the insolvent debtor to comply with any and all the provisions of this Act will forever debar him from obtaining his discharge.

Duties of Assignee.

3967. SEC. 38. The assignee appointed under this Act shall make out a true account of all disbursements made by him in the discharge of his duties as assignee, which shall be verified by the oath of such assignee, and shall deliver the same to the Judge having jurisdiction of the subject matter, and such Judge shall, in writing, certify such part or parts of the same as he shall deem to be just and necessarily expended by said assignee in the discharge of his duty, which amount so allowed shall be paid out of the property of such insolvent debtor.

Assignments, When Binding.

3968. SEC. 39. No assignment of any insolvent debtor otherwise than is provided in this Act shall be legal or binding upon creditors.

Adjudication of Insolvency—Petition to Be Filed—May Amend—Bond.

3969. SEC. 40. An adjudication of insolvency may be made on the petition of five or more creditors, residents of this state, whose debts or demands accrued in this state, and amount in the aggregate to not less than five hundred dollars; *provided*, that said creditors, or either of them, have not become creditors by assignment within thirty days prior to the filing of said petition; such petition must be filed in the district court of the county, or city and county, in which the debtor resides or has his place of business, and must be verified by at least three of the petitioners, setting forth that such person is about to depart from the state with intent to defraud his creditors, or being absent from the state with such intent, remains absent, or conceals himself to avoid the service of legal process, or, being insolvent, has suffered his property to remain under attachment or legal process for four days, or has confessed or offered to allow judgment in favor of any creditors, or willfully suffered judgment to be taken against him by default, or has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors, or has made an assignment, gift, sale, conveyance or transfer of his estate, property, rights or credits, with intent to delay, defraud or hinder his creditors, or, in contemplation of insolvency, has made any payment, gift, grant, sale, conveyance or transfer of his estate, property, rights or credits, or has been arrested or held in custody by virtue of any civil process of court, founded on any debt or demand, and such process remains in force and not discharged by payment or otherwise for a period of four days, or, being a merchant or tradesman, has stopped or suspended and not resumed payment within a period of forty days after maturity of any written acknowledgment of indebtedness, unless the party holding such acknowledgment has, in writing, waived the right to proceed under this subdivision; or, being a bank or banker, agent, broker, factor or commission merchant, has failed for forty days to pay any moneys deposited with, or received by him in a fiduciary capacity, upon demand of payment, except savings and loan banks, or associations who loan the money of their stockholders and depositors on real estate, and provided in their by-laws for the repayment of such deposits. The petitioners may from time to time amend and correct the petition, so that the same shall conform to the facts, by leave of the court before which the proceedings are pending; but nothing in this section shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan; the said petition shall be accompanied by a bond, with two sureties, in the penal sum of at least five hundred (\$500) dollars, conditioned that if the debtor should not be declared an insolvent, the petitioners will pay all costs and damages, including a reasonable attorney fee, which the debtor may sustain by reason of the filing of said petition. The court may, upon motion, direct the filing of an additional bond, with different sureties, when deemed necessary.

To Show Cause.

3970. SEC. 41. Upon the filing of such creditors' petition, the court shall issue an order requiring such debtor to show cause, at a time and place to be fixed by said court, why he should not be adjudged an insolvent debtor, and at the same time, or thereafter, upon good cause shown therefor, said court may make an order forbidding the payment of any debts and the delivery of any property belonging to such debtor, to him, or for his use, or the transfer of any property by him.

Petition Served on Debtor.

3971. SEC. 42. A copy of said petition, with a copy of the order to show cause,

shall be served on the debtor in the same manner as is provided by law for the service of summons in civil actions, but such service shall be made at least ten days before the time fixed for the hearing; *provided*, that if, for any reason, the service is not made, the order may be renewed, and the time and place of hearing changed, or, by a supplemental order by the court, or if such debtor cannot be found, or his place of abode ascertained, service shall be made by publication, as is provided in the Civil Practice Act for service of summons by publication.

Demurrer or Answer.

3972. SEC. 43. At the time for the hearing of said order to show cause, or such other time as it may be adjourned to, the debtor may demur to the petition for the same causes as are provided for demurrer in other cases by the Civil Practice Act. If the demurrer be overruled, the debtor shall have ten days thereafter in which to answer the petition. If the debtor answers the petition, such answer shall contain a specific denial of the material allegations of the petition controverted by him, and shall be verified in the same manner as pleadings in civil actions, and the issues raised thereon may be tried with or without a jury, according to the practice provided by law for the trial of civil actions.

Adjudging Debtor Insolvent.

3973. SEC. 44. If the respondent shall make default, or if, after a trial, the issues are found in favor of the petitioners, the court shall make an order adjudging that said respondent is, and was at the time of filing the petition, an insolvent debtor, and shall require said debtor, within such time as the court may designate, to file in court, the schedule and inventory provided for in sections three and four of this Act, and thereupon all proceedings shall be had in said matter in the same manner as if said debtor had voluntarily filed his petition.

Proceedings Dismissed.

3974. SEC. 45. If upon such hearing or trial, the issues are found in favor of the respondent, the proceedings shall be dismissed, and the respondent shall recover costs from the petitioning creditors, in the same manner as on final judgment in civil actions.

May Prepare Schedule.

3975. SEC. 46. If the debtor has failed to appear after service, personally or by publication, or is absent, or cannot be found, the schedule and inventory may be prepared by the Sheriff or by the assignee from the best information he can obtain.

Partnership, Manner of Procedure—To Prove Debts—Payment of Separate Debts.

3976. SEC. 47. Two or more persons who are partners in business may be adjudged insolvent either on the petition of such partners or any one of them, or on the petition of five or more creditors of the partnership, in which case an order shall be issued in the manner provided by this Act, upon which all the joint stock and property of the partnership and also all the separate estate of each of the partners shall be taken, excepting such parts thereof as may be exempt by law, and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts, and the assignee shall be chosen by the creditors of the copartnership, and shall also keep separate accounts of the joint stock, or property of the copartnership, and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole amount of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors, and if there shall be any balance of the separate estate of any partner after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors, and if there shall be any balance of the joint stock after the

payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners according to their respective rights and interest therein and as it would have been if the partnership had been dissolved without any insolvency, and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts, and the certificates of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been by or against him alone under this Act, and in all other respects the proceedings as to partners shall be conducted in like manner as if they had been commenced and prosecuted by or against one person alone. If such copartners reside in different counties, the court in which the petition is first filed shall retain exclusive jurisdiction over the case. If the petition be filed by less than all the partners of a copartnership, those partners who do not join in the petition shall be ordered to show cause why they should not be adjudged to be insolvent in the same manner as other debtors are required to show cause, upon a creditors' petition as in this Act provided.

Applicable to Corporations.

3977. SEC. 48. The provisions of this Act shall apply to corporations, and upon the petition of any officer of any corporation, duly authorized by the vote of the Board of Directors or Trustees, at a meeting specially called for that purpose, or by the assent, in writing, of a majority of the Directors or Trustees, as the case may be, or upon a creditor's petition made and presented in the manner provided in the case of debtors, all the provisions of this Act which apply to the debtor or set forth his duties, examination, or liabilities, or prescribe penalties, or relate to fraudulent conveyances, payments and assignments applied to each and every officer of any corporation in relation to the same matters concerning the corporation. Whenever any corporation is declared insolvent all its property and assets shall be distributed to the creditors; but no discharge shall be granted to any corporation.

Repeal.

3978. SEC. 49. All Acts relating to the subject matter contained in this Act and all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed; *provided, however*, that such repeal shall in no manner invalidate or affect any case in insolvency instituted and pending in any court prior to the day when this Act shall take effect, nor shall the provisions of this Act deprive any person of the benefits of this Act as to any indebtedness contracted prior to the taking effect of this Act.

Appeal in Certain Cases.

3979. SEC. 50. An appeal may be taken to the supreme court in the following cases: First—From an order granting or refusing an adjudication of insolvency. Second—Allowing or rejecting a creditor's claim in whole or in part. Third—Overruling a motion for a new trial. Fourth—Settling an account of an assignee. Fifth—Against or in favor of setting apart homestead or other property claimed as exempt from execution. Sixth—Granting or refusing a discharge to the debtor. Seventh—From an order staying all proceedings against the insolvent. The notice, undertaking, and procedure on appeal shall conform to the general laws of this state regulating appeals in civil cases, except that when the assignee has given an official undertaking and appeal from a judgment or order in insolvency his official undertaking stands in the place of an undertaking on appeal, and the sureties therein are liable on such undertaking.

Berryman v. Stern, 14 Nev. 415; Barker v. McLeod, 14 Nev. 148; Sadler v. Immel, 15 Nev. 265; Barnett v. Fifth Judicial District Court, 18 Nev. 286.

An Act to enable a certain class of claimants against the state to appeal to the courts.

Approved March 2, 1869, 104.

Actions Against the State.

3980. SECTION 1. An officer or person who has presented a claim against the state for services or advances authorized by law, and for which an appropriation has been made, but of which the amount has not been fixed by law, to the Board of Examiners, which claim said board or the State Controller has refused to audit and allow, in whole or in part, may commence an action in any court in Ormsby county having jurisdiction of the amount, for the recovery of such portion of the claim as shall have been rejected. In such action the State of Nevada shall be named as defendant, and the summons shall be served upon the State Controller, and the action shall proceed as other civil actions to final judgment.

Attorney-General to Defend—Controller May Appeal.

3981. SEC. 2. The Attorney-General shall defend all such actions on the part of the state. The Controller shall cause to be subpoenaed and examined such witnesses, and procure and cause to be introduced such documentary evidence as he shall deem necessary for the defense, and the sum of five hundred dollars is hereby appropriated, out of moneys in the treasury not otherwise appropriated, for the purposes of defraying any necessary expense in obtaining evidence and payment of costs for the defense of such actions. Appeals may be taken in all such actions by the Controller in behalf of the state.

Controller to Draw Warrants, When.

3982. SEC. 3. Upon the presentation of a certified copy of a final judgment in favor of the claimant in any such action, the Controller shall draw his warrant in favor of the claimant for the amount awarded by the judgment.

An Act requiring compensation for causing death by wrongful acts, neglect, or default.

Approved February 28, 1871, 90.

Liability for Death by Wrongful Act.

3983. SECTION 1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the persons who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured; and although the death shall have been caused under such circumstances as amount in law to a felony.

Judgment Not Liable for Debts—Distribution.

3984. SEC. 2. The proceeds of any judgment obtained in any action brought under the provisions of this Act shall not be liable for any debt of the deceased; *provided*, he or she shall have left a husband, wife, child, father, mother, brother, sister, or child or children of a deceased child; but shall be distributed as follows: First—If there be a surviving husband or wife, and no child, then to such husband or wife; if there be a surviving husband or wife, and a child or children, or grandchildren, then, equally to each, the grandchild or children taking by right of representation; if there be no husband or wife, but a child or children, or grandchild or children, then to such child or children and grandchild or children by right of representation; if there be no child or grandchild, then to a surviving brother or sister, or brothers or sisters, if there be any; if there be none of the kindred hereinbefore named, then the proceeds of such judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased persons; *provided*, every such action shall be brought by

and in the name of the personal representative or representatives of such deceased person; *and, provided further*, the jury in every such action may give such damages, pecuniary and exemplary, as they shall deem fair and just, and may take into consideration the pecuniary injury resulting from such death to the kindred as herein named.

An Act concerning the determination of conflicting rights to mining claims in certain cases.

Approved February 10, 1873, 50.

Jurisdiction of Court.

3985. SECTION 1. In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the government of the United States by either of the parties to such action for a patent for said mining claim, vein, or lode, it shall only be necessary to confer jurisdiction on the court to try said action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein, or lode has been made, and that the parties to said action are claiming such mining claim, vein, or lode, or some part thereof, or the right of possession thereof.

1. JURISDICTION—When Acquired. *Golden Fleece v. Cable Con. M. Co.*, 12 Nev. 312.

PROOFS, HOW MADE—ACTUAL POSSESSION. Each party must prove his claim to the premises in dispute, and the better claim must prevail. Actual possession makes out a prima facie case for the contestant and throws upon the defendant the burden of proving a superior right in himself. *Id.*

ACTUAL POSSESSION NOT NECESSARY—Possession, How Proved. *Id.*

TITLE TO MINING CLAIM—How Acquired. *Id.*

2. WHEN ACTION MAY BE MAINTAINED—Possession of Both Parties. *Rose v. Richmond M. Co.*, 17 Nev. 25.

JURISDICTION TO DECLARE ADVERSE CLAIM WAIVED BELONGS TO THE COURTS. It cannot be determined by the officers of the land department of the government. *Id.*

CRIMINAL PRACTICE.

An Act to regulate proceedings in criminal cases in the courts of justice in the Territory of Nevada.

Approved November 26, 1861, 435.

I—GENERAL DEFINITIONS AND PROVISIONS.

Crimes Defined.

3986. SECTION 1. A crime or public offense is an act or omission forbidden by law, and to which is annexed, on conviction: First—Death. Second—Imprisonment. Third—Fine. Fourth—Removal from office. Fifth—Disqualification to hold or enjoy any office of honor, trust, or profit under this territory.

Offenses, How Divided.

3987. SEC. 2. Public offenses are divided into: First—Felonies. Second—Misdemeanors.

Felony.

3988. SEC. 3. A felony is a public offense punishable with death, or by imprisonment in the territorial prison.

Misdemeanor.

3989. SEC. 4. Every other public offense is a misdemeanor.

Conviction Necessary.

3990. SEC. 5. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction.

Prosecution by Indictment.

3991. SEC. 6. Every public offense must be prosecuted by indictment, except: First—Where proceedings are had for the removal of a civil officer of the territory. Second—Offenses arising in the militia when in actual service in time of war, or which this territory may keep, with the consent of Congress, in time of peace. Third—Offenses tried in justices' courts.

Criminal Action.

3992. SEC. 7. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, shall be known as a criminal action.

How Prosecuted.

3993. SEC. 8. A criminal action shall be prosecuted in the name of the people of the United States in the Territory of Nevada, as a party against the party charged with the offense.

Designation.

3994. SEC. 9. The party prosecuted in a criminal action is designated in this Act as the defendant.

Rights of Defendant—Witnesses.

3995. SEC. 10. In a criminal action the defendant is entitled: First, to a speedy and public trial; second, to be allowed counsel, as in civil actions; or he may appear and defend in person or with counsel; and, third, to produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court; except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down in writing, and subscribed by the witness in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally, in the like manner, in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, the deposition of such witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot, with due diligence, be found within the territory.

Second Prosecution Not Allowed.

3996. SEC. 11. No person shall be subject to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.

Witness Against Himself.

3997. SEC. 12. No person shall be compelled, in a criminal action, to be a witness against himself, nor shall a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Jury Necessary.

3998. SEC. 13. No person can be convicted of a public offense, tried by indictment, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and ninety-three.

II—PREVENTION OF PUBLIC OFFENSES.**Lawful Resistance.**

3999. SEC. 14. Lawful resistance to the commission of a public offense may be made: First—By the party about to be injured. Second—By other parties

Party About to Be Injured.

4000. SEC. 15. Resistance sufficient to prevent the offense may be made by the party about to be injured: First—To prevent an offense against his person, or his family, or some member thereof. Second—To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

Others May Aid.

4001. SEC. 16. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

Intervention of Officers.

4002. SEC. 17. Public offenses may be prevented by the intervention of the officers of justice: First—By requiring surety to keep the peace. Second—By forming a police in cities and towns, and by requiring their attendance in exposed places. Third—By suppressing riots.

By Other Persons.

4003. SEC. 18. Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command act in their aid, are justified in so doing.

Complaint for Threatening.

4004. SEC. 19. A complaint may be laid before any of the magistrates mentioned in section one hundred and two, that a person has threatened to commit an offense against the person or property of another.

Examination.

4005. SEC. 20. When the complaint is laid before the magistrate, he shall examine, on oath, the complainant and any witness he may produce, and shall take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrate to Issue Warrant.

4006. SEC. 21. If it appears from the deposition that there is just reason to fear the commission of the offense threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the Sheriff of the county, or any Constable, Marshal, or policeman in the territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

Hearing of Evidence.

4007. SEC. 22. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

Complaint Dismissed, When.

4008. SEC. 23. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of shall be discharged.

Surety to Keep the Peace.

4009. SEC. 24. If, however, there be a just reason to fear the commission of the offense, the person complained of may be required to enter into a bond, in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this territory, and particularly towards the complainant. The bond shall be valid and binding for six months, and may, upon the renewal of the complaint, be extended for a longer period, or a new bond may be required.

Failure to Give Bond.

4010. SEC. 25. If the bond required by the last section be given, the party

complained of shall be discharged. If he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to pay the same.

Discharged on Giving Same.

4011. SEC. 26. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate upon giving the same.

Bond to Be Filed.

4012. SEC. 27. A bond given, as provided in section twenty-four, must be filed by the magistrate in the office of the Clerk of the county.

Breach of Peace.

4013. SEC. 28. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault another, or to commit any offense against his person or property, or who shall contend with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section twenty-four, or, if he refuse to do so, may be committed as provided in section twenty-five.

Bond to Keep the Peace, When Broken.

4014. SEC. 29. A bond to keep the peace shall be deemed broken on a conviction of the person complained against of a breach of the peace.

When Prosecuted.

4015. SEC. 30. Upon the District Attorney's producing evidence of such conviction to the district court of the United States, in the Territory of Nevada, the court shall order the bond to be prosecuted, and the District Attorney shall thereupon commence an action on the same, in the name of the people of this territory.

Breach of Bond.

4016. SEC. 31. In the action, the offense stated in the record of conviction shall be alleged as the breach of the bond, and shall be conclusive evidence thereof.

No Other Security.

4017. SEC. 32. No security to keep the peace, or be of good behavior, shall be required except as herein prescribed.

Police Force.

4018. SEC. 33. The organization and regulation of the police force, in the cities and towns of this territory, are governed by special laws.

SECS. 34 to 48, concerning riotous assemblies, are superseded, SECS. 1862-1874.

Resisting Authorities.

4019. SEC. 49. Any person who shall, after the publication of the proclamation authorized by section forty-seven, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the Governor to quell or suppress an insurrection, shall be punished by imprisonment, in a territorial prison, for a term not less than two years.

III—PROCEEDINGS FOR REMOVAL OF PUBLIC OFFICERS.

Subject to Impeachment.

4020. SEC. 50. Any territorial officer, created by territorial law, shall be liable for impeachment for any misdemeanor in office.

How Tried.

4021. SEC. 51. All impeachments shall be tried by the council; when sitting for that purpose, the councilmen shall be upon oath or affirmation.

Proceedings.

4022. SEC. 52. When a civil officer of the territory is impeached by the house of representatives for a misdemeanor in office, the articles of impeachment shall be delivered to the President of the Council.

Notice Served on Defendant.

4023. SEC. 53. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives thereof. The President of the Council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for the hearing.

Service Must Be Personal or by Publication.

4024. SEC. 54. The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the territory, the council, upon due proof of that fact, may order that publication be made in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Impeachment, When Heard.

4025. SEC. 55. If the defendant do not appear, the council, upon proof of service or publication, as provided in the last two sections, may, of their own motion, or for cause shown, assign another day for hearing the impeachment; or may then, or at any other time which they may appoint, proceed, in the absence of the defendant, to trial and judgment.

Answer of Defendant.

4026. SEC. 56. When the defendant appears, he must answer the articles of impeachment, which he may do, either by objecting to the sufficiency of the same, or of any article therein, or by denying the truth of the same.

Objection to Be in Writing.

4027. SEC. 57. If the defendant objects to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journal.

Pleadings.

4028. SEC. 58. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the council, who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment. If he plead guilty, or refuse to plead, the council shall render judgment of conviction against him. If he deny the matters charged, the council shall, at such time as they may appoint, proceed to try the impeachment.

Oath Taken by Council.

4029. SEC. 59. At the time and place appointed, and before the council proceed to act on the impeachment, the Secretary shall administer to the President of the Council, and the President of the Council to each of the members of the council then present, an oath or affirmation truly and impartially to hear, try, and determine the impeachment, and no member of the council shall act or vote upon the impeachment, or any question arising thereon, without having taken such oath or affirmation.

Trial.

4030. SEC. 60. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Two-Thirds to Convict.

4031. SEC. 61. The defendant cannot be convicted on impeachment without

the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in a conviction he shall be declared acquitted.

Judgment.

4032. SEC. 62. After conviction the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution entered upon the journals of the council. The vote upon the passage thereof shall be taken by yeas and nays, and shall in like manner be entered upon the journal.

Majority Vote.

4033. SEC. 63. On the adoption of the resolution by a majority of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the council.

Judgment, Extent Of.

4034. SEC. 64. The judgment may be that defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust, or profit, under this territory.

Effect of Judgment.

4035. SEC. 65. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees, or emoluments of the office.

Officer Suspended—Office Filled by Governor.

4036. SEC. 66. Whenever articles of impeachment against any officer subject to impeachment, shall be presented to the President of the Council, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any territorial officer, created by territorial law, the Governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the Governor, by and with the advice and consent of the council, until the acquittal of the party impeached; or, in case of his removal, then until the vacancy be filled as provided by law.

Indictment Not Barred.

4037. SEC. 67. If the offense for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

Proceedings Against Officers.

4038. SEC. 68. An accusation in writing against any district, county, or township officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

MISDEMEANOR IN OFFICE, PUBLIC ADMINISTRATOR. *State v. Browsky*, 11 Nev. 119.

EXPIRATION OF TERM OF OFFICE. It is a "misdemeanor in office" for a Public Administrator to embezzle money received ex officio after his term of office has expired. *Id.*

Statement of Offense.

4039. SEC. 69. The accusation shall state the offense charged in ordinary and concise language, and without repetition.

Accusation—Notice to Appear.

4040. SEC. 70. The accusation shall be delivered by the foreman of the grand jury to the District Attorney of the county, who shall cause a copy thereof to be served upon the defendant, and require by notice, in writing, of not less than ten days, that he appear before the district court then sitting, or at the next term, and answer the accusation. The original accusation shall then be filed with the Clerk of the District Court.

Defendant to Appear.

4041. SEC. 71. The defendant must appear at the time appointed in the

notice, and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Answer of Defendant.

4042. SEC. 72. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Objection to Sufficiency.

4043. SEC. 73. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

Denial of Accusation.

4044. SEC. 74. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

Objection Not Sustained.

4045. SEC. 75. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

Plea.

4046. SEC. 76. If the defendant plead guilty, or refuse to answer the accusation, the court shall render judgment of conviction against him. If he deny the matters charged, the court shall immediately, or as soon thereafter as practicable, proceed to try the accusation.

Trial by Jury.

4047. SEC. 77. The trial shall be by a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

JURY OF ELEVEN MEN. *State v. Browsey*, 11 Nev. 119.

Attendance of Witnesses.

4048. SEC. 78. The District Attorney and the defendant shall be respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon the trial of an indictment.

Judgment.

4049. SEC. 79. Upon a conviction the court shall immediately, or within five days, as they may appoint, pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

Appeal.

4050. SEC. 80. From a judgment of removal an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment be reversed the defendant shall be suspended from his office. Pending the appeal the office may be filled as in case of vacancy.

Proceedings Against District Attorney.

4051. SEC. 81. The same proceedings may be had on like grounds for the removal of a District Attorney, except that the accusation shall be delivered to the District Judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the District Attorney of an adjoining district, and require him to conduct the proceedings.

IV—PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

1—Local Jurisdiction of Public Offenses.

Who Amenable to the Laws.

4052. SEC. 82. Every person, whether an inhabitant of this territory, or any

other state or country, or of a territory or district of the United States, shall be liable to punishment by the laws of this territory for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

Commenced Out of State—Jurisdiction.

4053. SEC. 83. When the commission of a public offense commenced without the territory, is consummated within the boundaries thereof, the defendant shall be liable to punishment therefor in this territory, though he were without the territory at the time of the commission of the offense charged; *provided*, he consummated the offense through the intervention of an innocent or guilty agent without this territory or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offense is consummated.

Death by Dueling.

4054. SEC. 84. When an inhabitant or resident of this territory shall, by any previous appointment or engagement, fight a duel without the jurisdiction of this territory, and in such duel a wound shall be inflicted upon any person whereof he shall die within this territory, the jurisdiction of the offense shall be in the county where the death shall happen.

In Two Counties.

4055. SEC. 85. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction shall be in either county.

On or Near County Boundary.

4056. SEC. 86. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

On Vessels.

4057. SEC. 87. When an offense is committed within this territory, on board a vessel navigating a river, bay, slough, or lake, or lying therein in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

Kidnaping, When Cognizable.

4058. SEC. 88. The jurisdiction of an indictment for the crime of forcibly stealing, taking, or arresting any man, woman, or child in this territory and carrying him or her into another county, state, or territory; or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States; or for hiring, persuading, enticing, decoying, or seducing by false promises, misrepresentations, and the like, any negro, mulatto, Indian, or colored person to go out of this territory, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, colored person, or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, Indian or colored person, shall be, in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in, or being accessory to the commission of the offense, or in abetting the parties therein concerned.

Bigamy or Incest.

4059. SEC. 89. When the offense of bigamy or incest is committed in one

county, and the defendant is apprehended in another, the jurisdiction shall be in either county.

Property Stolen and Moved to Other County—Jurisdiction.

4060. SEC. 90. When property feloniously taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense shall be in either county. But if, at any time before the conviction of the defendant in the latter, he be indicted in the former county, the Sheriff of the latter county shall, upon demand, deliver him to the Sheriff of the former county, upon being served with a copy of the indictment, and upon receipt indorsed thereon by the Sheriff of the former county, of the body of the offender, and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

INDICTMENT FOR LARCENY OF CATTLE BROUGHT FROM ANOTHER COUNTY—Sufficiency Of—
Venue. *State v. Brown*, 8 Nev. 208.

Jurisdiction of Accessory.

4061. SEC. 91. In the case of an accessory before or after the fact in the commission of a public offense, the jurisdiction shall be in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

1. VENUE OF TRIAL OF ACCESSORY. Above section does not apply when acts of accessory are done out of state. *State v. Chapman*, 6 Nev. 320.
2. Application of Above Section Discussed. *State v. Laurie*, 13 Nev. 390.

Conviction or Acquittal Shall Be a Bar.

4062. SEC. 92. When an act charged as a public offense is within the jurisdiction of another state or territory, as well as of this territory, a conviction or acquittal thereof in such territory or state shall be a bar to a prosecution or indictment therefor in this territory.

Two or More Counties.

4063. SEC. 93. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

2—Time of Commencing Criminal Actions.

No Limit for Murder.

4064. SEC. 94. There shall be no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Indictment for Theft, etc., When May Be Found.

4065. SEC. 95. An indictment for theft, robbery, burglary, forgery, arson or rape must be found within four years after the commission of the offense. An indictment for any other felony than murder, theft, robbery, burglary, forgery, arson or rape must be found within three years after the commission of the offense. *As amended, Stats. 1889, 52.*

Misdemeanor, One Year.

4066. SEC. 96. An indictment of any misdemeanor must be found within one year after its commission.

In a Secret Manner, Limitation.

4067. SEC. 97. If any felony or misdemeanor shall have been committed in a secret manner, an indictment for the same must be found within the periods of limitation prescribed in the two last preceding sections after the discovery of the offense; *provided*, that if any indictment found within the time thus prescribed shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense within six months after the first shall have

been abandoned. *As amended, Stats. 1889, 52.* (SEC. 3.) This Act shall apply alike to all offenses committed before its passage and to those committed thereafter, except that it shall not be construed to extend the periods of limitation of offenses barred by limitation at the time of the passage of this Act. [*Applies to Secs. 96 and 97, as amended.*]

Indictment, When Found.

4068. SEC. 98. An indictment is found within the meaning of this title, when it is duly presented by the grand jury in open court, and there received and filed.

Limitation, When to Commence.

4069. SEC. 99. In offenses committed before the passage of this Act, indictments may be found at any time within the limitation hereinabove provided, and the time of limitation shall commence after the passage of this Act.

§—Complaint, and Proceedings Thereon to the Commitment, Inclusive.

Complaint.

4070. SEC. 100. The complaint is the allegation made to a magistrate that a person has been guilty of some public offense.

Magistrates.

4071. SEC. 101. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

JUSTICE OF THE PEACE—When Acting as Magistrate—Judicial Business on Sunday. *Ex Parte White, 15 Nev. 146.*

Who Are Magistrates.

4072. SEC. 102. The following persons are magistrates: First—The Justices of the Supreme Court. Second—The Judges of the District Courts. Third—The Justices of the Peace; and Fourth—Police Judges and others, upon whom are conferred by law the powers of a Justice of the Peace in criminal cases. *As amended, Stats. 1867, 124.*

Examination of Complainant.

4073. SEC. 103. When a complaint is laid before a magistrate of the commission of a public offense triable within the county, he must examine on oath the complainant or prosecutor and any witness he may produce, and may require their depositions to be reduced to writing and subscribed by the parties making them if the magistrate deem it advisable; *provided*, if a complaint by proper affidavit, setting forth the nature of the charge, and the facts within the knowledge, information, or belief of the party making the same, be filed with the magistrate, and it sufficiently appears that an offense has been committed by some person known or unknown to the affiant, triable within the county, the Justice may issue a warrant of arrest. *As amended, Stats. 1867, 125.*

Deposition.

4074. SEC. 104. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense, and the guilt of the defendant.

Warrant, When to Issue.

4075. SEC. 105. If the magistrate be satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

Warrant of Arrest—Form Of.

4076. SEC. 106. A warrant of arrest is an order in writing in the name of the people of the United States and Territory of Nevada, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form: "County of----- The People of the United States and Territory

of Nevada, to any Sheriff, Constable, Marshal, or policeman in this territory, or in the county of-----: A complaint, upon oath, has been this day laid before me by A. B., that the crime of [designate it], has been committed, and accusing C. D. thereof; you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at [naming the place], or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county. Dated at-----, this-----day of-----, 18----."

Warrant to Specify, What.

4077. SEC. 107. The warrant must specify the name of the defendant; if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued, and be signed by the magistrate with his name of office.

How Executed.

4078. SEC. 108. The warrant must be directed to, and executed by, a peace officer.

Peace Officers.

4079. SEC. 109. Peace officers are Sheriffs of counties, and Constables, Marshals, and policemen of cities and towns, respectively.

To Whom Directed.

4080. SEC. 110. If a warrant be issued by a Justice of the Supreme Court, or Probate Judge, it may be directed generally to any Sheriff, Constable, Marshal, or policeman in this territory, and may be executed by any of those officers to whom it may be delivered.

Executed in Other County, How.

4081. SEC. 111. If it be issued by any other magistrate, it may be directed generally to any Sheriff, Constable, Marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant be in another county, it may be executed therein upon the written direction of a magistrate of that county indorsed upon the warrant, signed by him with his name of office, and dated at the county, city or town where it is made, to the following effect: This warrant may be executed in the county of -----, or as the case may be.

Procedure of Officer in Felony.

4082. SEC. 112. If the offense charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section one hundred and sixteen.

Misdemeanor—Admission to Bail.

4083. SEC. 113. If the offense charged in a warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

Bail.

4084. SEC. 114. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the Clerk of the court at which the defendant is required to appear.

Bail Not Given.

4085. SEC. 115. If, on the admission of the defendant to bail, as provided in section one hundred and thirteen, or if bail be not forthwith given, the officer

shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided by the next section.

Magistrate Absent or Unable to Act.

4086. SEC. 116. When, by the preceding sections of this Act, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant, with his return, indorsed and subscribed by him.

Unnecessary Delay.

4087. SEC. 117. The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

Before Another Magistrate.

4088. SEC. 118. If the defendant be brought before a magistrate in the same county, other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to such magistrate; or, if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

Complaint Triable in Another County.

4089. SEC. 119. When a complaint is laid before a magistrate, of the commission of a public offense, triable within some other county of this territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this Act, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced, shall be delivered by the magistrate to the officer to whom the warrant is delivered.

Duty of Officer.

4090. SEC. 120. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and shall deliver to such magistrate the depositions and the warrant, with his return indorsed thereon, and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

In Misdemeanor.

4091. SEC. 121. If the offense charged in the warrant issued pursuant to section one hundred and nineteen, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail, and immediately transmit the warrant, depositions, and recognizance, to the Clerk of the court in which the defendant is required to appear.

Arrest.

4092. SEC. 122. Arrest is the taking of a person into custody that he may be held to answer for a public offense.

By Whom Made.

4093. SEC. 123. An arrest may be either: First, by a peace officer, under a warrant; second, by a peace officer, without a warrant; or, third, by a private person.

Required to Aid In.

4094. SEC. 124. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

At What Time Made.

4095. SEC. 125. If the offense charged be a felony, the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, indorsed upon the warrant.

How Made.

4096. SEC. 126. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.

Necessary Restraint Only.

4097. SEC. 127. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

To State Authority.

4098. SEC. 128. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant, if required.

Defendant Resisting.

4099. SEC. 129. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Power of Officers.

4100. SEC. 130. The officer may break open any outer or inner door, or window, of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Officer May Break Door.

4101. SEC. 131. An officer may break open any outer or inner door, or window, of a dwelling house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Arrest Without Warrant.

4102. SEC. 132. A peace officer may, without a warrant, arrest a person: First—For a public offense, committed, or attempted, in his presence. Second—Where the person arrested has committed a felony, although not in his presence. Third—Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. Fourth—On a charge made upon a reasonable cause of the commission of a felony by the party arrested.

May Break Doors.

4103. SEC. 133. To make an arrest, as provided in the last section, the officer may break open any outer or inner door, or window, of a dwelling house, if after notice of his office and purpose, he be refused admittance.

Arrest at Night.

4104. SEC. 134. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that a felony has not been committed.

To State Authority.

4105. SEC. 135. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offense, or when he is pursued immediately after an escape.

Arrest by Bystander.

4106. SEC. 136. He may take before a magistrate any person who, being engaged in a breach of peace, is arrested by a bystander and delivered to him.

Presence of Magistrate.

4107. SEC. 137. When a public offense is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Private Person May Arrest.

4108. SEC. 138. A private person may arrest another: First—For a public offense committed, or attempted, in his presence. Second—When the person arrested has committed a felony, although not in his presence. Third—When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

To State Cause of Arrest.

4109. SEC. 139. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit, immediately after its commission.

May Break Doors or Windows.

4110. SEC. 140. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling house, for the purpose of making the arrest.

After Arrest.

4111. SEC. 141. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

Escape and Recapture.

4112. SEC. 142. If a person arrested escape or be rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place within the territory.

May Break Doors.

4113. SEC. 143. To retake a person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open any outer or inner door or window of a dwelling house.

Proceedings After Arrest.

4114. SEC. 144. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

Time to Procure Counsel.

4115. SEC. 145. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel, within the township or city, as the defendant may name. The officers shall, without delay and without fee, perform that duty.

Examination.

4116. SEC. 146. The magistrate shall, immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

Completion and Adjournment.

4117. SEC. 147. The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be

for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

PRELIMINARY EXAMINATION SHOULD NOT BE WAIVED—When Waived No Ground for Discharge. *Ex Parte Ah Bau*, 10 Nev. 264.

Committed or Admitted to Bail.

4118. SEC. 148. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, admit him to bail, or discharge him from custody upon the deposit of money, as provided in this Act, as security for his appearance at the time to which the examination is adjourned.

Form of Commitment.

4119. SEC. 149. The commitment for examination shall be by an indorsement signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination to the Sheriff of the county of -----." If the Sheriff be not present, the defendant may be committed to the custody of a peace officer.

Depositions Read.

4120. SEC. 150. At the examination the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information. He shall issue subpoenas for any witness required by the prosecutor or the defendant, as provided in section five hundred and thirty-six.

Witnesses Examined—May Use Testimony on Trial—Testimony Filed.

4121. SEC. 151. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf. If either party so desire, the examination shall be by interrogatories, direct and cross; *provided*, by consent of parties, the testimony may be reduced to writing in narrative form. The testimony so taken may be used by either party on the trial of the cause, and in all proceedings therein, when the witness is sick, out of the state, dead, or when his personal attendance cannot be had in court. When the testimony of each witness is all taken, the same shall be read over to the witness and corrected as may be desired, and then subscribed by the witness; or, if he refuses to sign it, the fact of such refusal, and any reasons assigned therefor, must be stated, and the same shall be tested by the magistrate. And such testimony, so reduced to writing and authenticated according to the provisions of this section, shall be filed by the examining magistrate with the Clerk of the District Court of his county, and in case such prisoner be subsequently examined upon a writ of habeas corpus such testimony shall be considered as given before such Judge or court. *As amended, Stats. 1867, 125.*

1. **SECTION 151 CONSTRUED—WITNESS OUT OF STATE.** A deposition of a witness taken under Section 151 of the Criminal Practice Act, cannot be used in evidence without proof that at the time of the trial the witness was "sick, out of the state, dead, or that his personal attendance could not be had in court." *State v. Parker*, 16 Nev. 79.

2. **OFFER OF DEPOSITIONS ON CRIMINAL TRIAL—PRELIMINARY PROOF.** When a deposition in a criminal case is offered in evidence, the offer should be accompanied with proof that it was taken in conformity with the statute; and if the proper objection be made, it should not be admitted without such preliminary proof. *State v. Jones*, 7 Nev. 408.

OBJECTION TO DEPOSITION IN CRIMINAL CASE—When Too General—Objection Should Be Specific and Pointed. *Id.*

3. **PRELIMINARY EXAMINATION—WAIVER OF STATUTORY RIGHT.** Defendant objected to proceeding with the trial because the testimony given at his preliminary examination had not been reduced to writing, as required by the statute: *Held*, that he could not avail himself of this irregularity without an affirmative showing that he was deprived of this statutory right without his consent. *State v. Davis*, 14 Nev. 407.

Right to Make Statement.

4122. SEC. 152. When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right

to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he see fit, to answer the charge, and to explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver cannot be used against him on the trial.

STATEMENT OF DEFENDANT ON PRELIMINARY EXAMINATION—How Taken and When Admissible in Evidence. *State v. Rover*, 13 Nev. 17.

Waiver of Right.

4123. SEC. 153. If the defendant waive his right to make a statement, the magistrate shall make a note thereof immediately following the deposition of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

Statement Taken in Writing—Questions.

4124. SEC. 154. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: "What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation."

Answers.

4125. SEC. 155. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

Statement, Authentication Of.

4126. SEC. 156. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: First—It must set forth in detail that the defendant was informed of his rights as provided by section one hundred and fifty-two, and that after being so informed he made the statement. Second—It must contain the questions put to him, and his answers thereto, as provided in sections one hundred and fifty-four and one hundred and fifty-five. Third—It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it. Fourth—It must be signed and certified by the magistrate.

Witnesses.

4127. SEC. 157. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

Examination, etc.

4128. SEC. 158. The witnesses produced on the part either of the people or of the defendant shall not be present at the examination of the defendant, and while a witness is under examination the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

EXCLUSION OF WITNESSES. When an order is made excluding defendant's witness from the court room, so that neither witness shall hear the others testify, and some of the witnesses come in during the trial, this may discredit such witnesses, and subject them to punishment for contempt. But the defendant himself, not being in fault, is entitled to their testimony. *State v. Salge*, 2 Nev. 321; *State v. Rover*, 13 Nev. 21.

Closed Doors.

4129. SEC. 159. The magistrate shall, also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor

and his counsel, the Attorney-General, the District Attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

Discharged, When.

4130. SEC. 160. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offense has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an indorsement on the depositions and statement signed by him to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

Order to Hold to Answer.

4131. SEC. 161. If, however it appear from the examination, that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall in like manner, indorse on the depositions and statement, an order signed by him to the following effect: "It appearing to me by the within depositions and statement (if any), that the offense therein mentioned (or any other offense according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

When Not Bailable.

4132. SEC. 162. If the offense be not bailable, the following words, or words to the same effect, shall be added to the indorsement: "And that he be committed to the Sheriff of the county of-----."

Bail in Case of Felony.

4133. SEC. 163. If the offense be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the indorsement: "And I have admitted him to bail to answer by the recognizance hereto annexed"; *provided*, that if the offense charged constitutes a felony, no bail shall be accepted in a less sum than five hundred dollars. *As amended, Stats. 1897, 22.*

Bail Not Given.

4134. SEC. 164. If the offense be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the indorsement mentioned in section one hundred and sixty-one: "And that he be admitted to bail in the sum of-----dollars, and be committed to the Sheriff of the county of-----, until he gives such bail."

Commitment.

4135. SEC. 165. If the magistrate order the defendant to be committed, as provided in sections one hundred and sixty-two and one hundred and sixty-four, he shall make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

Form of Commitment.

4136. SEC. 166. The commitment must be to the following effect: "County of----- (as the case may be). The People of the United States and Territory of Nevada to the Sheriff of the county of-----: An order having been this day made by me, that A. B. be held to answer upon a charge of [stating briefly the nature of the offense, and, as near as may be, the time when and place where the same was committed]; you are commanded to receive him into your custody and detain him until he be legally discharged. Dated this-----day of-----, 18--."

COMMITMENT, TESTIMONY SUFFICIENT TO AUTHORIZE—Form Of. Ex Parte Willoughby, 14 Nev. 451.

Recognizance of Witnesses.

4137. SEC. 167. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum which may be ordered by the court. *As amended, Stats. 1867, 125.*

SECTION 167 CONSTRUED—RECOGNIZANCE—ADMISSION OF DEPOSITION. Section 167 of the Criminal Practice Act, as amended in 1867, does not make the taking of a recognizance a condition precedent to the admission of the deposition. *State v. Parker, 16 Nev. 79.*

May Require Sureties.

4138. SEC. 168. Whenever the magistrate shall be satisfied by proof, on oath, that there is reason to believe that any such witness will not fulfill his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet for his appearance, as specified in the last section.

To Procure Sureties.

4139. SEC. 169. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Witness May Be Committed.

4140. SEC. 170. If a witness required to enter into recognizance to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

Witness Unable to Give Security.

4141. SEC. 171. When, however, it shall satisfactorily appear by the examination on oath of the witness, or any other person, that the witness is unable to procure sureties, or if either the state or the defendant shall demand that the deposition of the witness be then taken, he or she may be forthwith conditionally examined on behalf of the party requiring the deposition to be taken; such examination shall be by question and answer, and shall be reduced to writing by the magistrate, or under his direction, in the presence of the defendant and the counsel for the state. When the examination is completed the deposition shall be carefully read over to the witness, and corrected in any particular desired, signed by the witness, certified by the magistrate, and transmitted to the Clerk of the District Court of the proper county. The witness thereupon shall be discharged; *provided*, when both parties consent thereto, the deposition may be taken in narrative form. *As amended, Stats. 1867, 125.*

Not to Apply.

4142. SEC. 172. The last section shall not apply to the prosecutor, or to an accomplice in the commission of the offense charged.

Magistrate to Make Return.

4143. SEC. 173. When a magistrate has discharged a defendant, or has held him to answer, as provided in sections one hundred and sixty-one and one hundred and sixty-two, he shall return without delay to the Clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, the statement of defendant, if he have made one, and all recognizance of bail or for the appearance of witnesses taken by him.

4—Proceedings After Commitment, and Before Indictment.

Indictment.

4144. SEC. 174. All public offenses prosecuted in the district court must be prosecuted by indictment, except as provided in the next section.

By Accusation.

4145. SEC. 175. Where the proceedings are had for the removal of district, county, or township officers, they may be commenced by an accusation, in writing, as provided in sections sixty-eight and eighty-one.

Accusations and Indictments Found in District Court.

4146. SEC. 176. All accusations against district, county, and township officers, and all indictments, must be found in the district court.

Grand Jury.

4147. SEC. 177. The formation of grand juries is prescribed by special statutes.

Challenge To.

4148. SEC. 178. A challenge may be taken to the panel of the grand jury, or to any individual grand juror, in the cases hereinafter prescribed, by the people or by the defendant.

Challenge to Panel.

4149. SEC. 179. A challenge to the panel may be interposed for one or more of the following causes: First—That the requisite number of ballots was not drawn from the jury box of the county as prescribed by law. Second—The notice of the drawing of the grand jury was not given as prescribed by law. Third—That the drawing was not had in the presence of the officers or officer designated by law.

CHALLENGE TO PANEL OF GRAND JURORS. Right of challenge restricted to the three grounds enumerated in the statute. *State v. Collyer*, 17 Nev. 275; *State v. Millain*, 3 Nev. 409.

MOTION TO QUASH INDICTMENT—When Should Be Made. *Id.*

WHEN INDICTMENT WILL NOT BE SET ASIDE FOR IRREGULARITIES IN THE MODE OF SELECTING GRAND JURY. *Id.*

Challenge to Individual Juror.

4150. SEC. 180. A challenge to an individual grand juror may be interposed for one or more of the following causes, and for no other: First—That he is a minor. Second—That he is an alien. Third—That he is insane. Fourth—That he is the prosecutor, upon a charge or charges, against the defendant. *As amended, Stats. 1866, 49.*

PROSECUTOR DEFINED. A prosecutor is "one who prefers an accusation against a party whom he suspects to be guilty." A party who appears in response to a subpoena is not a prosecutor, but only a witness. *State v. Millain*, 3 Nev. 409.

Challenge, How Made and Tried.

4151. SEC. 181. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the court in the same manner as challenges in the case of a trial jury which are triable by the court.

Decision On.

4152. SEC. 182. The court shall allow or disallow the challenge, and the Clerk shall enter its decisions in the minutes.

Effect of Challenge to Panel.

4153. SEC. 183. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the court shall direct the indictment to be set aside.

Of Challenge to Polls.

4154. SEC. 184. If a challenge to an individual grand juror be allowed, he shall not be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

Contempt.

4155. SEC. 185. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

Objections.

4156. SEC. 186. A person held to answer to a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror, in no other mode than by challenge, as prescribed in the preceding section.

Amended, Stats. 1875, 117; amendment unconstitutional. *State v. McClear*, 11 Nev. 39.

Foreman of Grand Jury.

4157. SEC. 187. From the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged or excused before the grand jury is dismissed.

Oath of Foreman.

4158. SEC. 188. The following oath shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of the United States in the Territory of Nevada, committed or triable within the jurisdiction of this court, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Oath of Jurors.

4159. SEC. 189. The following oath shall be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God."

Charge to Grand Jury.

4160. SEC. 190. The grand jury being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offenses returned to the court, or likely to come before the grand jury. The court need not, however, charge them respecting violations of any particular statute.

Sitting of Grand Jury.

4161. SEC. 191. The grand jury shall then withdraw to a private room, and inquire into the offenses cognizable by them.

Discharge of Jury.

4162. SEC. 192. The grand jury, on the completion of the business before them, shall be discharged by the court, but whether the business be completed or not, they shall be discharged by the final adjournment of the court.

Another Grand Jury.

4163. SEC. 193. If an offense be committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the Sheriff summon another grand jury.

Order for New Grand Jury.

4164. SEC. 194. An order shall thereupon be made out by the Clerk, and directed to the Sheriff, requiring him to summon twenty-four persons, qualified to serve as grand jurors, to appear forthwith, or at such time as may be named by the court.

Duty of Officer.

4165. SEC. 195. The Sheriff shall execute the order, and return it with a list of the names of the persons summoned.

How Drawn.

4166. SEC. 196. At the time appointed the list shall be called over, and the names of those in attendance be written by the Clerk on separate ballots, and put into a box, from which a grand jury shall be drawn.

SECS. 197 to 201, both inclusive, relating to the selection and formation of trial and grand juries, are superseded, Sec. 3867, *et seq.*

Powers and Duties of Grand Jury.

4167. SEC. 202. The grand jury has the power, and it is their duty, to inquire into all public offenses committed or triable within the jurisdiction of this court, and to present them to the court, either by presentment or indictment.

Indictment.

4168. SEC. 203. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

Presentment.

4169. SEC. 204. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed, which is triable within the district, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

Oaths.

4170. SEC. 205. The foreman may administer an oath to any witness appearing before the grand jury.

Evidence, What to Receive.

4171. SEC. 206. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of witnesses taken as provided in this Act.

Legal Evidence.

4172. SEC. 207. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

Evidence for Defendant May Not Be Heard.

4173. SEC. 208. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses.

Indictment, When Found.

4174. SEC. 209. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Information by Member of Grand Jury.

4175. SEC. 210. If a member of the grand jury know, or have reason to believe, that a public offense has been committed, which is triable within the jurisdiction of this court, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

Inquiries Made.

4176. SEC. 211. The grand jury must inquire into the case of every person imprisoned in the jail of the county, on a criminal charge, and not indicted;

into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

Free Access to Jails and Prisons.

4177. SEC. 212. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination without charge, of all public records within the district.

Ask Advice of Court—Who Allowed Present.

4178. SEC. 213. The grand jury may, at all reasonable times, ask the advice of the court, or any member thereof, and of the District Attorney. Unless his advice be asked, no member of the court shall be permitted to be present during the session of the grand jury. The District Attorney shall be allowed, at all times, to appear before the grand jury on his request, for the purpose of giving information or advice relative to any matter cognizable by them; and may interrogate witnesses before them, when they shall deem it necessary. Except the District Attorney, no person shall be permitted to be present before the grand jury besides the witnesses actually under examination, and no person shall be permitted to be present during the expression of their opinions, or the giving of their votes upon any matter before them.

Proceedings Secret.

4179. SEC. 214. Every member of the grand jury shall keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror, may have voted on a matter before them.

Testimony Disclosed, When.

4180. SEC. 215. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court; or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

GRAND JURORS MAY BE CALLED TO TESTIFY against a witness who is indicted for perjury, to prove what was sworn to before them, or to show that the indictment is not found by the requisite number; but the testimony of no grand juror can be received to impeach or affect the findings of his fellows. *State v. Logan*, 1 Nev. 510.

Not to Be Questioned.

4181. SEC. 216. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

Presentment, How Found.

4182. SEC. 217. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be signed by the foreman.

Amended, Stats. 1893, 62. Amending Act unconstitutional. *State v. Hartley*, 22 Nev. 354.

How Prosecuted.

4183. SEC. 218. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and shall be filed by the Clerk.

Not to Disclose.

4184. SEC. 219. No grand juror, District Attorney, Clerk, Judge, or other officer, shall disclose the fact of a presentment having been made for a felony until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant.

Punishment for Disclosure.

4185. SEC. 220. A violation of the provisions of the last section shall be punishable as a contempt and as a misdemeanor.

Bench Warrants.

4186. SEC. 221. If the court deem that the facts stated in the presentment constitute a public offense, triable within the county, it shall direct the Clerk to issue a bench warrant for the arrest of the defendant.

Clerk to Issue.

4187. SEC. 222. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more districts.

Form of Bench Warrant.

4188. SEC. 223. The bench warrant, upon presentment, shall be substantially in the following form:

County of _____. The People of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this territory: A presentment having been made on the ____ day of _____, 18__, to the district court of the district of _____, charging C. D. with the crime of _____ [designating it generally]; you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F. a magistrate of this district; or, in case of his absence or inability to act, before the nearest or most accessible magistrate of this district. Given under my hand, with the seal of the said court affixed, this ____ day of _____, A. D. 18___. By order of the court. G. H., Clerk.

Bench Warrant, How Executed.

4189. SEC. 524. The bench warrant may be served in any district, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint, except that when served in another district it need not be indorsed by a magistrate of that district.

Proceedings on Arrest.

4190. SEC. 225. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner, in all respects, as upon a warrant of arrest on complaint.

*5—The Indictment.***Grand Jury—Twelve Necessary for Indictment.**

4191. SEC. 226. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it shall be indorsed: "a true bill," and the indorsement shall be signed by the foreman of the grand jury.

Amended, Stats. 1893, 43. Amending Act unconstitutional. *State v. Hartley*, 22 Nev. 354.

When Twelve Fail to Concur.

4192. SEC. 227. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the deposition and statement, if any, transmitted to them, shall be returned to the court with the indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Amended, Stats. 1893, 62. Amending Act unconstitutional. *State v. Hartley*, 22 Nev. 354.

Dismissal No Bar.

4193. SEC. 228. The dismissal of the charge shall not, however, prevent the same charge from being again submitted to a grand jury, or as often as the court shall so direct. But, without such direction, it shall not be again submitted.

Names of Witnesses Inserted.

4194. SEC. 229. When an indictment is found, the names of the witnesses

examined before the grand jury shall be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Presented to Court.

4195. SEC. 230. An indictment, when found by the grand jury, shall be presented by their foreman, in their presence, to the court, and shall be filed with the Clerk, and remain in his office as a public record.

Defendant Not in Custody.

4196. SEC. 231. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in sections two hundred and fifty-eight and two hundred and sixty-five, both inclusive, against a defendant who fails to appear for arraignment.

Pleadings.

4197. SEC. 232. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this Act.

First Pleading.

4198. SEC. 233. The first pleading on the part of the people is the indictment.

Indictment to Contain.

4199. SEC. 234. The indictment shall contain the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

CHARGE OF CRIME. The crime must be directly and positively charged, and not argumentatively. *State v. Logan*, 1 Nev. 110.

MATERIAL ALLEGATIONS. Not to be supplied by any intendment or implication whatever. *Id.*

Form of Indictment—Signed by District Attorney.

4200. SEC. 235. It may be substantially in the following form:

State of Nevada, County of----- The State of Nevada, plaintiff, against A. B., defendant (or John Doe, whose real name is unknown). Defendant A. B., above named, is accused by the grand jury of the county of----- of a felony (or if of the crime of murder, etc.), committed as follows: The said A. B., on the---- day of-----, A. D. 18--, or thereabouts, without authority of law, and with malice aforethought, killed Richard Roe, by shooting him with a pistol (or with a gun or other weapon, according to the facts).

If the offense be an assault with an intent to commit murder, the statement may be as follows: The said A. B., on the---- day of-----, A. D. 18--, in the county of-----, without authority of law, and with malice aforethought, did shoot at Richard Roe with a pistol, with intent to kill him.

If the offense be a misdemeanor, it may be designated by the name or style the offense is usually defined or known, or simply as a misdemeanor, and the facts constituting the offense may be stated in a manner similar to the examples above stated.

The indictment must be signed by the District Attorney. *As amended, Stats. 1867, 126.*

VENUE MATERIAL IN INDICTMENTS. An allegation of the county wherein a crime was committed is as material in an indictment as any fact constituting the body of the offense. *State v. Chamberlain*, 6 Nev. 257.

CONSTRUCTION OF STATUTE CONTAINING FORM OF INDICTMENT. The section of the criminal statute giving the form of an indictment and omitting the venue therefrom is controlled by the next section, which requires a statement of all essential facts. *Id.*

OMISSION OF VENUE IN INDICTMENT NOT AMENDABLE. An indictment which omits to state the venue cannot be amended in that respect. *Id.*

MEANING OF "INDICTMENT OF A GRAND JURY" IN CONSTITUTION. Where an indictment, which omitted the essential allegation of venue, was amended in that respect: *Held*, that it was no longer an "indictment of a grand jury," within the meaning of Article I, Section 8, of the constitution. *Id.*

Must Be Direct.

4201. SEC. 236. The indictment must be direct, and contain, as it regards: First—The party charged. Second—The offense charged. Third—The particular facts of the offense charged, so far as necessary to constitute a complete offense, but the evidence tending to prove the charge need not be stated. It shall not be necessary to set forth in the indictment the character of weapon used, nor that any weapon was used in the commission of the offense, unless the using of such weapon is a necessary ingredient in the commission of the offense. *As amended, Stats. 1867, 126.*

Error in Defendant's Name.

4202. SEC. 237. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

MISNOMER OF ACCUSED PERSON IN INDICTMENT. If, when arraigned, he do not give his true name upon request, he cannot complain so long as name used in indictment is sufficient to identify him. *State v. Burns, 8 Nev. 251.*

To Charge One Offense.

4203. SEC. 238. The indictment shall charge but one offense, but it may set forth that offense in different forms under different counts.

1. INDICTMENT—COUNTS SETTING OUT OFFENSE IN DIFFERENT FORMS. *Held*, good under above section. *State v. Chapman, 6 Nev. 320.*
2. INDICTMENT FOR EMBEZZLEMENT. Counts setting out offense in different forms, must show that but one offense is charged. *State v. Malim, 14 Nev. 288.*
3. INDICTMENT FOR BURGLARY CHARGING ALSO LARCENY. An indictment for burglary with intent to steal certain goods, which after stating the burglary goes on to allege the stealing of the goods, is not objectionable as charging two separate and distinct offenses. *State v. Ali Sam, 7 Nev. 127.*
4. OBJECTION TO INDICTMENT FOR CHARGING TWO OFFENSES should be taken by special demurrer. *State v. Johnson, 9 Nev. 175.*

Time of Offense.

4204. SEC. 239. The precise time at which it was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offense.

INDICTMENT—Time of Commission of Offense. *State v. O'Connor, 11 Nev. 416.*

Not Material.

4205. SEC. 240. When an offense involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

FORGERY. Above section given in instructions. *State v. Cleavland, 6 Nev. 181.*

Construction of Indictment.

4206. SEC. 241. The words used in an indictment shall be construed in the usual acceptance in common language, except such words and phrases as are defined by law, which are to be construed according to their legal meaning.

Need Not Be Strictly Followed.

4207. SEC. 242. Words used in a statute to define a public offense, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

CHARGE OF INDICTMENT OF STATUTORY OFFENSE should be in words of the statute creating it, or in words of similar import. *People v. Logan, 1 Nev. 110.*

Indictment, When Sufficient.

4208. SEC. 243. The indictment shall be sufficient, if it can be understood therefrom: First—That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth. Second—That it was found by a grand jury of the district in which the court was held. Third—That the defendant is named, or, if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to discover his real name. Fourth—That the offense was committed at some place within the jurisdiction of the court. Fifth—That the offense was committed at some time prior to the time of finding the indictment. Sixth—That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. Seventh—That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

1. **SUFFICIENCY OF INDICTMENT—Assault With Intent to Murder—Legislative Power Over Form of Indictment Plenary.** State v. O'Flaherty, 7 Nev. 153; State v. Millain, 3 Nev. 410.
2. **MURDER.** An indictment for murder, drawn in the approved form of the common law: *Held*, sufficient. State v. Raymond, 11 Nev. 98.
3. **MURDER—DEFICIENCY.** If not specially demurred to, cured by verdict. State v. Harrington, 9 Nev. 91.
4. **DIFFERENT DEGREES OF MURDER NEED NOT BE CHARGED—Legislative Power.** State v. Millain, 3 Nev. 409.
5. **MURDER.** Use of words "malice aforethought" tantamount to averment that the act was "willful, deliberate and premeditated." State v. Hing, 16 Nev. 307; State v. Thompson, 12 Nev. 140; State v. Crozier, 12 Nev. 300.
6. **IN CHARGING MURDER.** An indictment which specifically accuses the defendant "of the crime of murder," instead of using the general words "of a felony," is unobjectionable. State v. Harris, 12 Nev. 414.
- "CONTRARY TO THE FORM OF THE STATUTE." The words "contrary to the form of the statute," etc., are not essential in an indictment for murder, which is a common law offense. *Id.*
7. **MURDER—Character of Weapon Used Need Not Be Stated.** State v. McLane, 15 Nev. 343.
8. **MURDER—WHEN DEFECTIVE.** An indictment for murder which fails to show that death occurred within a year and a day after the perpetration of the act which produced it, fails to state the requisite facts to constitute a complete offense. State v. Huff, 11 Nev. 17.
9. **MURDER.** Allegation of shooting without allegation of death of victim: *Held*, sufficient. State v. Anderson, 4 Nev. 265.
10. **"ASSAULT WITH INTENT TO KILL"** sufficient to sustain conviction for "an assault with a deadly weapon." State v. Collyer, 17 Nev. 275.
- DEADLY WEAPON** need not be averred. *Id.*
11. **INDICTMENT FOR HOMICIDE.** Verdict of "assault with intent to kill" sustained. *Ex Parte* Curnow, 21 Nev. 33.
12. **ASSAULT WITH INTENT TO KILL.** It is not necessary in charging an assault to allege a present ability to kill or inflict injury. State v. Rigg, 10 Nev. 284.
- STATEMENT OF CRIME.** Statutory designation not necessary. *Id.*
13. **ASSAULT WITH INTENT TO MURDER—Charging the Intent—Battery or Injury Not Necessary to Constitute.** State v. Roderigas, 7 Nev. 328.
14. **ROBBERY—Property Taken Not Property of Prosecuting Witness—Charge Held Sufficient.** State v. Ah Loi, 5 Nev. 99.
15. **ROBBERY—OWNERSHIP OF PROPERTY.** The essential averment is that the property did not belong to the defendant. State v. Nelson, 11 Nev. 334.
16. **GRAND LARCENY.** Acts done must be set out. State v. Brannan, 3 Nev. 238.
17. **GRAND LARCENY OF ORE—Larceny of Articles Severed from Freehold.** State v. Berryman, 8 Nev. 262.
18. **FORGERY.** Precise words of statute need not be used. State v. McKiernan, 17 Nev. 224.
19. **ATTEMPT TO ESCAPE FROM PRISON.** State v. Angelo, 18 Nev. 425.
20. **EMBEZZLEMENT.** Particular kind of funds, or particular time when received, need not be stated. State v. Carrick, 16 Nev. 120.
21. **EMBEZZLEMENT.** Allegation of "willfully, feloniously, or with intent to steal" not necessary. State v. Trolson, 21 Nev. 419.

22. **SELLING OPIUM—STATUTORY OFFENSE—NEGATIVE EXCEPTIONS.** In an indictment for a statutory offense, it is only necessary to state the negative to an exception to the statute, when the exception is such as to render the negative of it an essential part of the definition or description of the offense charged. *State v. Ah Chew*, 16 Nev. 50.

IDEM. It is the nature of the exception, and not its locality, that determines the question whether it should be stated in the indictment or not. *Id.*

23. **OPIUM ACT—Mode of Using Not Essential.** *State v. On Gee How*, 15 Nev. 184.

24. **INDICTMENT.** Surplusage in indictment does not vitiate when otherwise good. *State v. Sawry*, 4 Nev. 161; *State v. Harkin*, 7 Nev. 377; *State v. Pierce*, 8 Nev. 291.

25. **INDICTMENT FOR EMBEZZLEMENT.** A clerk may commit more than one embezzlement of his employer's money, and if he does he may be separately indicted for each separate offense. *State v. Ricord*, 11 Nev. 288.

Defect in Form Not Material When Does Not Prejudice—Amendment.

4209. **SEC. 244.** No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon, be affected, by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant; and the court may, on application, direct the indictment to be amended to supply a deficiency or omission, when, by such amendments, the nature of the charge shall not be changed, and the defendant's defense to the action on the merits will not be prejudiced thereby; *provided*, any amendment made during the trial, or within five days thereof, on motion, and without any showing therefor, shall entitle the defendant to a postponement of the trial till next term. *As amended, Stats. 1867, 126.*

1. **AMENDMENT OF INDICTMENT.** A court has no more power to add any material charge, accusation, or allegation to an indictment, than it has to find a bill in the first instance. *State v. Chamberlain*, 6 Nev. 257.

2. **DEFECT NOT MATERIAL.** That part of the indictment which, under the statutory form, first charges that a defendant has committed a certain crime, is merely formal; and if the body of the indictment sufficiently shows the offense charged, and the facts constituting the offense, it will be held good, notwithstanding any defect in the first clause. *State v. Anderson*, 3 Nev. 254.

What Need Not Be Stated.

4210. **SEC. 245.** Neither presumption of law, nor matters of which judicial notice is taken, need be stated in an indictment.

Judgment, How Pleased.

4211. **SEC. 246.** In pleading a judgment, or other determination of or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made, or the proceeding duly had before such court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

Private Statute.

4212. **SEC. 247.** In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Indictment for Libel.

4213. **SEC. 248.** An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Misdescription of Forged Instruments.

4214. **SEC. 249.** When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Perjury.

4215. SEC. 250. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or the person before whom it was taken had authority to administer the same, with proper allegations as to the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, or the commission, or the authority of the court or person before whom the perjury was committed.

Indictment Against Several.

4216. SEC. 251. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Principal and Accessory.

4217. SEC. 252. No distinction shall exist between an accessory before the fact and the principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

State v. Chapman, 6 Nev. 320; State v. Laurie, 13 Nev. 386.

TRIAL OF ACCESSORY BEFORE THE FACT—Charge as to Principal—Proof of Guilt of Principal Not Necessary. *State v. Jones, 7 Nev. 409.*

Accessory May Be Punished Alone.

4218. SEC. 253. An accessory after the fact to the commission of a felony may be indicted and punished, though the principal felon may be neither tried nor indicted.

Compounding Offenses.

4219. SEC. 254. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity, or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

When Defendant Must Be Arraigned.

4220. SEC. 255. When the indictment is filed the defendant must be arraigned thereon before the court in which it is found, except in the cases mentioned in sections two hundred and seventy-six and two hundred and seventy-seven.

Must Appear Personally.

4221. SEC. 256. If the indictment be for a felony, the defendant must be personally present; but if for a misdemeanor, his personal appearance is unnecessary, and he may appear upon arraignment by counsel.

How Arraigned.

4222. SEC. 257. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is to bring him before it to be arraigned, and the officer shall do so accordingly.

Failing to Appear.

4223. SEC. 258. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Warrant for Arrest.

4224. SEC. 259. The Clerk, on the application of the District Attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Bench Warrant, Form Of.

4225. SEC. 260. The bench warrant upon the indictment shall, if the offense be a felony, be substantially in the following form:

County of _____. The People of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this territory: An indictment having been found on the ____ day of _____, A. D. 18__, in the district court of the judicial district of the county of _____, charging C. D. with the crime of [designating it generally]; you are therefore commanded forthwith to arrest the above named C. D., and bring him before that court to answer the indictment; or, if the court have adjourned for the term, that you deliver him into the custody of the Sheriff of the county of _____. Given under my hand, with the seal of the court affixed, this the ____ day of _____, A. D. 18___. By order of the court. [Seal.] E. F., Clerk.

Proceedings.

4226. SEC. 261. The defendant, if the offense be punishable with death, when arrested under the warrant, shall be held in custody by the Sheriff of the county in which the indictment is found, unless admitted to bail, on an examination upon a writ of habeas corpus.

Form of Warrant.

4227. SEC. 262. If the offense be not capital, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "Or, if he require it, that you take him before any magistrate in that district, or in the district in which you arrested him, that he may give bail to answer to the indictment."

When Offense Not Capital.

4228. SEC. 263. If the offense charged be not capital, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench warrant, signed by the Clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ____ dollars."

Warrant, How Served.

4229. SEC. 264. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

Bail in Another County.

4230. SEC. 265. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon as provided in sections one hundred and twelve and one hundred and fifteen, both inclusive.

Further Bail.

4231. SEC. 266. When the indictment is for felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

May Be Committed.

4232. SEC. 267. If such order be made, and the defendant be present, he

shall be forthwith committed accordingly. If he be not present, a bench warrant shall be issued and proceeded upon in the manner provided for in this Act.

Counsel for Defendant.

4233. SEC. 268. If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desire the aid of counsel.

Arraignment.

4234. SEC. 269. The arraignment must be made by the court, or by the Clerk or District Attorney under his direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.

True Name.

4235. SEC. 270. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name he must then declare his true name, or be proceeded against by the name in the indictment.

Name Not Given.

4236. SEC. 271. If he give no other name, the court may proceed accordingly.

State v. Burns, 8 Nev. 251.

True Name on Minutes.

4237. SEC. 272. If he allege that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Time to Answer.

4238. SEC. 273. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

Answer, Demur or Plead.

4239. SEC. 274. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may answer to the arraignment—either move the court to set aside the indictment, or may demur or plead thereto.

Indictment, When Set Aside.

4240. SEC. 275. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases: First—Where it is not found indorsed and presented as prescribed in this Act. Second—Where the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment or indorsed thereon. Third—Where any person is permitted to be present during the session of the grand jury while the charge embraced in the indictment is under consideration, except as provided in section two hundred and thirteen.

1. MOTION TO QUASH INDICTMENT because the grand jurors were not selected according to law, ought to be made before plea. State v. Collyer, 17 Nev. 275.

2. MOTION TO SET ASIDE INDICTMENT MUST BE MADE BEFORE DEMURRER OR PLEA—WAIVER. By the provisions of Sections 274-79 a motion to set aside the indictment must be made before demurrer or plea. If not so made, it will be deemed to have been waived. State v. Laurie, 13 Nev. 386.

INDICTMENT—DEPOSITIONS OF WITNESS TO BE INDORSED ON. The names of witnesses whose depositions are read before the grand jury must be inserted at the foot of, or indorsed on the indictment. Id.

3. MOTION TO SET ASIDE, NOT DEMURRER—Proper Practice. State v. Harris, 12 Nev. 414.

4. **INDICTMENT, WHEN SHOULD NOT BE QUASHED.** Illegal or incompetent testimony before grand jury does not vitiate indictment when there is any legal testimony to sustain it. *State v. Logan*, 1 Nev. 509.

When Not Held to Answer.

4241. SEC. 276. Where the defendant had not been held to answer before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge, either to the panel or any individual grand juror.

Repealed, Stats. 1875, 117; repealing Act unconstitutional. *State v. McClear*, 11 Nev. 39.

Objections Waived.

4242. SEC. 277. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

OBJECTION TO INDICTMENT must be taken by motion to set aside, or by special demurrer, or it cannot be made. *State v. Roderigas*, 7 Nev. 328.

Hearing of Motion.

4243. SEC. 278. The motion shall be heard when it is made, unless for good cause the court shall postpone the hearing to another time.

Must Answer.

4244. SEC. 279. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

Defendant Discharged.

4245. SEC. 280. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he have deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Case Resubmitted.

4246. SEC. 281. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail, or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Order for Discharge.

4247. SEC. 282. Unless a new indictment be found before the next grand jury of the district is discharged, the court shall, on the discharge of such grand jury, make the order prescribed in section two hundred and eighty.

RESUBMISSION OF CASE—Failure of Grand Jury to Indict, Not a Bar. *Ex Parte Job*, 17 Nev. 184.

No Bar.

4248. SEC. 283. An order to set aside an indictment, as provided in this Act, shall be no bar to a future prosecution for the same offense.

Pleadings of Defendant.

4249. SEC. 284. The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer.

4250. SEC. 285. Both the demurrer and the plea must be put in, in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Demurrer, for What Cause.

4251. SEC. 286. The defendant may demur to the indictment when it shall appear upon the face thereof either: First—That the grand jury by which it

was found had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the court. Second—That it does not substantially conform to the requirements of sections two hundred and thirty-four and two hundred and thirty-five. Third—That more than one offense has been charged in the indictment. Fourth—That the facts stated do not constitute a public offense. Fifth—That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to the prosecution.

1. OBJECTION TO FORM WAIVED BY FAILURE TO DEMUR. *State v. Huff*, 11 Nev. 17.

2. OBJECTIONS TO AN INDICTMENT—WHEN NO GROUND OF DEMURRER. An objection that an indictment has not been found, indorsed or presented as prescribed by law, is not a ground of demurrer, but must be taken by motion to set aside the indictment before pleading to it. *State v. Harris*, 12 Nev. 414.

IDEM. An objection that the indictment was not signed by the District Attorney cannot be made by demurrer, but must be made by motion to set aside the indictment. *Id.*

3. SPECIAL POINT NOT TO BE RAISED UNDER GENERAL DEMURRER TO INDICTMENT. *State v. Roderigas*, 7 Nev. 328.

4. OBJECTION TO INDICTMENT FOR CHARGING TWO OFFENSES—DEMURRER. An objection to an indictment, that it charges more than one offense, should be taken by special demurrer. *State v. Johnson*, 9 Nev. 175.

5. SUSTAINING A DEMURRER TO ONE COUNT, NOT AMENDMENT. *State v. McKiernan*, 17 Nev. 224.

6. APPEAL FROM ORDER SUSTAINING DEMURRER TO INDICTMENT—Record, How Made. *State v. Fellows*, 8 Nev. 311.

Form of Demurrer.

4252. SEC. 287. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

DEMURRER TO INDICTMENT—GROUNDS TO BE DISTINCTLY SPECIFIED. It seems that a demurrer to an indictment "that it charges two separate and distinct offenses" is objectionable for the reason that it does not distinctly specify the grounds of objection as contemplated by the statute relating to criminal practice. *State v. Ah Sam*, 7 Nev. 127.

Hearing Of.

4253. SEC. 288. Upon the demurrer being filed, the objections presented thereby shall be heard either immediately, or at such time as the court may appoint.

Judgment.

4254. SEC. 289. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

Effect of Allowance of Demurrer.

4255. SEC. 290. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offense, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Case Not Resubmitted.

4256. SEC. 291. If the court do not direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

Case Submitted—Proceeding.

4257. SEC. 292. If the court direct that the case be resubmitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two.

Disallowing Demurrer.

4258. SEC. 293. If the demurrer be disallowed, the court shall permit the

defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

Objections, How Taken.

4259. SEC. 294. When the objections mentioned in section two hundred and eighty-six appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, and in arrest of judgment.

MOTION IN ARREST OF JUDGMENT. *State v. O'Connor*, 11 Nev. 416.

DEFECTS OF FORM IN INDICTMENT. Objections must be made in lower court. *State v. O'Flaherty*, 7 Nev. 154.

Pleas, Kinds Of.

4260. SEC. 295. There are three kinds of pleas to an indictment: A plea of: First—Guilty. Second—Not guilty. Third—A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of "not guilty."

Oral Plea.

4261. SEC. 296. Every plea shall be oral, and shall be entered upon the minutes of the court.

Entry and Form of Plea.

4262. SEC. 297. The plea shall be entered in substantially the following form: First—If the defendant plead guilty, "the defendant pleads that he is guilty of the offense charged in this indictment." Second—If he plead not guilty, "the defendant pleads that he is not guilty of the offense charged in the indictment." Third—If he plead a former acquittal or conviction, "the defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offense charged in the indictment, by the judgment of the court of _____ [naming it], rendered at _____ [naming the place], on the _____ day of _____."

1. WITHDRAWAL OF PLEA. When a prisoner has pleaded "not guilty," it is in the discretion of the court whether or not to allow him to withdraw that plea to interpose another. *State v. Salge*, 2 Nev. 321.

The prisoner has, however, an absolute right to withdraw that plea to interpose any good defense which has arisen since the last continuance of the case. *Id.*

2. PLEA OF FORMER ACQUITTAL—When Should Be Allowed. *State v. Johnson*, 11 Nev. 273.

Plea of Guilty.

4263. SEC. 298. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

May Be Withdrawn.

4264. SEC. 299. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Not Guilty.

4265. SEC. 300. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

Evidence Under Not Guilty.

4266. SEC. 301. All matters of fact, tending to establish a defense other than that specified in the third subdivision of section two hundred and ninety-five, may be given in evidence under the plea of not guilty.

Former Acquittal.

4267. SEC. 302. If the defendant were formerly acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the

form or substance of the indictment, it shall not be deemed an acquittal of the same offense.

Acquittal on Merits.

4268. SEC. 303. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the same offense, notwithstanding any defect, in form or substance, in the indictment on which he was acquitted.

Former Acquittal or Conviction.

4269. SEC. 304. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, as provided in section four hundred and twelve.

1. JEOPARDY—WHEN IT ATTACHES. Whenever the accused has been placed upon trial, upon a valid indictment before a competent court, and a jury duly impaneled, sworn and charged with the case his jeopardy attaches, and the discharge of the jury before verdict, unless with the consent of the defendant, or the intervention of some unavoidable accident or some overruling necessity, operates as an acquittal. *Ex Parte Maxwell*, 11 Nev. 428.

WHEN JEOPARDY DOES NOT ATTACH. Whenever a trial has commenced, whether for misdemeanor or felony, and the Judge discovers any imperfection which will render a verdict void or voidable by him, he may stop the trial, and what has been done will be no impediment in the way of any future proceedings. *Id.*

2. JEOPARDY—WHEN IT DOES NOT ATTACH. When the verdict in a criminal case is so defective that no judgment can be entered upon it, the defendant, who might have had it perfected, is considered as assenting to it, and as waiving any objections to being tried before another jury. *State v. Rover*, 10 Nev. 388.

3. ACQUITTAL BY JURY, BAR. *State v. Herrick*, 3 Nev. 259.

Defendant Mute.

4270. SEC. 305. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

Change of Venue.

4271. SEC. 306. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant or state, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending. *As amended, Stats. 1869, 66.*

1. CHANGE OF VENUE. The action of the lower court, in granting or refusing a change of venue, is a matter of judicial discretion. If that discretion is abused, it becomes the duty of an appellate court to afford relief. *State v. Millain*, 3 Nev. 409; *State v. McLane*, 15 Nev. 345.

TWO CIRCUMSTANCES SHOULD INFLUENCE A COURT TO GRANT A CHANGE OF VENUE. One, the impossibility of obtaining a fair and impartial jury; the other, such a state of public excitement against the prisoner as would be likely to overawe and intimidate even a fair jury. *Id.*

2. CHANGE OF VENUE—PREJUDICE—EXAMINATION OF JURORS BY COURT. It is proper for a District Judge to overrule a motion for a change of venue, on the ground that there exists in the community such a prejudice that the accused cannot obtain an impartial trial, until it can be shown by an examination of a sufficient number of jurors that a fair and impartial jury cannot be obtained. *State v. Gray*, 19 Nev. 212.

3. SHOWING FOR CHANGE OF VENUE—When Insufficient. *State v. Lawry*, 4 Nev. 161.

Application, How Made.

4272. SEC. 307. The application must be made in open court, and in writing, verified by the affidavit of the defendant or District Attorney, and a copy of said affidavit must be served on the adverse party at least one day before the application is made to the court; *provided*, the application may be supported or opposed by other affidavits or other evidence, or witnesses may be examined in open court. *As amended, Stats. 1869, 66.*

Where Made.

4273. SEC. 308. If the court be satisfied that the representation of the party making the application is true, an order shall be made for the removal of the action to the district court of a county which is free from the like objection. *As amended, Stats. 1869, 66.*

Order Entered on Minutes.

4274. SEC. 309. The order of removal shall be entered on the minutes, and the Clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of the defendant, and of the witnesses, to the court to which the action is removed.

Removal of Defendant.

4275. SEC. 310. If the defendant be in custody, the order shall direct his removal by the Sheriff of the county where he is imprisoned to the custody of the Sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly.

After Removal.

4276. SEC. 311. The court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in such court. If it be necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed shall, at any time, on application of the District Attorney or the defendant, order such papers or pleadings to be transmitted by the Clerk, a certified copy thereof being retained.

Issue of Fact.

4277. SEC. 312. An issue of fact arises: First, upon a plea of not guilty; or, second, upon a plea of a former conviction or acquittal of the same offense.

How Tried.

4278. SEC. 313. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed, by order of the court, into some other county.

FORMER ACQUITTAL, QUESTION FOR THE JURY. *State v. Johnson, 11 Nev. 273.*

Jury Trial.

4279. SEC. 314. Trial juries, for criminal actions, shall be formed in the same manner as trial juries for civil actions.

Docket of Action.

4280. SEC. 315. The Clerk shall keep a docket of all the criminal actions pending in the court, in which he shall enter each indictment according to the date of filing, specifying, opposite the title of each action, whether it be for a felony or misdemeanor, or whether the defendant be in custody or on bail.

Issues on Docket—Order of Disposition.

4281. SEC. 316. The issues on the docket shall be disposed of in the following order, unless upon the application of either party for good cause, shown by affidavit, and upon two days' notice to the opposite party, with a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order: First—Indictments for felony when the defendant is in custody. Second—Indictments for misdemeanor when the defendant is in custody. Third—Indictments for felony when the defendant is on bail. Fourth—Indictments for misdemeanor when the defendant is on bail.

Time to Prepare.

4282. SEC. 317. After his plea, the defendant shall have at least two days to prepare for his trial, if he require it.

Postponement of Trial—Depositions, etc.

4283. SEC. 318. When an indictment is called for trial, the court may, upon

sufficient cause, shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term. But in all cases where a continuance is granted upon the application of either party, the court may require, as a condition of granting such continuance, that the party applying therefor consent to the taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken. Such deposition shall be taken in the same manner that depositions are required to be taken in section one hundred and seventy-one of this Act. The court shall also have authority to require all witnesses to enter into recognizances, in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued; *provided*, that any witness who is unable to procure sureties for his attendance may be discharged on his own recognizance, upon giving his deposition in the manner prescribed in section one hundred and seventy-one of this Act. All depositions taken in pursuance of any of the provisions of this Act may be read in evidence, subject to legal objections taken at the time of taking the same, on the trial of the cause, whenever it shall appear that the personal attendance of the witness could not, with due diligence, be obtained, or when he has left the state, or become of unsound mind, or is too sick or infirm to attend, or is dead. *As amended, Stats. 1867, 126.*

1. FAILURE TO PROCURE JURY GROUND FOR CONTINUANCE—Affidavit Unnecessary—Indefinite Postponement Irregular, But Does Not Operate as Discharge. *Ex Parte Stanley*, 4 Nev. 113.
2. CONTINUANCE BY COURT ON ITS OWN MOTION. *State v. Lawry*, 4 Nev. 161.
3. CONTINUANCE. When a prisoner makes out a proper case for continuance, on account of the absence of a material witness, it is error to compel him to go to trial on the admission of the District Attorney that the witness, if present, would swear to the facts as stated by the defendant. *State v. Salge*, 2 Nev. 321; *State v. McLane*, 15 Nev. 373.
4. AFFIDAVIT FOR CONTINUANCE in a criminal case, on account of the absence of witnesses should give assurance of their attendance at the time to which it is proposed to continue, and show the means of affiant's information; and unless such attendance seems probable the continuance should be denied. *State v. Rosemurgey*, 9 Nev. 308.
5. CONTINUANCE—ABSENCE OF WITNESS—AFFIDAVIT. Fatally defective when it fails to show that there are not other persons by whom the defendant could prove the same facts that he expected to prove by the absent witness. *State v. Marshall*, 19 Nev. 240.
6. CONTINUANCE WITHIN DISCRETION OF COURT, and unless there is an abuse of its discretion its action will be sustained. *State v. Chapman*, 6 Nev. 320; *State v. Rosemurgey*, 9 Nev. 308.
- OBJECTION TO AFFIDAVIT FOR CONTINUANCE. Cannot be made for first time in supreme court. *Id.*
- AFFIDAVIT SHOULD SHOW DILIGENCE ON PART OF DEFENSE. *Id.*
7. CONTINUANCE. Affidavit defective when does not show due diligence to produce witnesses or that they could be produced at subsequent term. *State v. Gray*, 19 Nev. 212.
- WHEN ATTACHMENT TO BRING WITNESS IN is offered by court, continuance properly refused if insisted upon. *Id.*
8. CONTINUANCE PROPERLY REFUSED. Affidavit fails to show testimony of absent witnesses material, or that an effort had been made to procure their attendance. *State v. Davis*, 14 Nev. 407.
9. AFFIDAVIT FOR CONTINUANCE—Material Facts to Be Stated Positively. *State v. O'Flaherty*, 7 Nev. 153.
- PRACTICE ON REFUSAL OF CONTINUANCE. *Id.*

Challenging the Jury.

4284. SEC. 319. A challenge is an objection made to the trial jurors, and is of two kinds: First—To the panel. Second—To an individual juror.

By Several Defendants.

4285. SEC. 320. When several persons jointly indicted, are tried together, they are not allowed to sever their challenges, but must join therein. *As amended, Stats. 1873, 62.*

Panel.

4286. SEC. 321. A panel is a list of jurors returned by a Sheriff to serve at a particular court, or for the trial of a particular cause.

Challenge to the Panel.

4287. SEC. 322. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

On What Founded.

4288. SEC. 323. A challenge to the panel can only be founded on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury, or on the intentional omission of the Sheriff to summon one or more of the jurors drawn.

When Taken.

4289. SEC. 324. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

1. A CHALLENGE TO THE PANEL OF TRIAL JURORS must be in writing, specifically stating the grounds of challenge, or other facts on which the challenge is based. *State v. Millain*, 3 Nev. 409.
2. CHALLENGE TO THE PANEL. Not considered because one juror has expressed actual bias and others implied bias. *State v. Raymond*, 11 Nev. 98.
3. CHALLENGE DISALLOWED. When no evidence offered in support of challenge: *Held*, properly disallowed. *State v. Rigg*, 10 Nev. 234.
4. CHALLENGE TO PANEL—BIAS OF OFFICER. A challenge in writing to a panel of additional jurors, summoned upon an open venire, directed to the Sheriff, on the ground "that the Deputy Sheriff who summoned forty of said jurors was biased against defendant": *Held*, insufficient in failing to state whether it was taken for implied or actual bias. *State v. Gray*, 19 Nev. 212.
5. CHALLENGE—PROPER PRACTICE. To dispose of each challenge in the order named in the statute. *State v. Davis*, 14 Nev. 439.

Exception to Challenge.

4290. SEC. 325. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court.

Trial of Challenge.

4291. SEC. 326. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Exception May Be Withdrawn.

4292. SEC. 327. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

Denial and Trial Of.

4293. SEC. 328. If the challenge be denied, the denial may, in like manner, be oral, and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact.

Witnesses Examined.

4294. SEC. 329. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge.

Challenge for Bias of Officer.

4295. SEC. 330. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good

ground of challenge to a juror. Such objection shall be made in the same form, and determined in the same manner, as when made to a juror.

Repealed, Stats. 1875, 117; repealing Act unconstitutional. *State v. McClear*, 11 Nev. 39.

Effect of Allowing.

4296. SEC. 331. If, either upon an exception to the challenge, or a denial of the fact, the challenge be allowed, the court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be impaneled.

Challenge to the Polls.

4297. SEC. 332. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of Challenge.

4298. SEC. 333. A challenge to an individual juror is either: First—Peremptory; or, Second—For cause.

When to Be Taken.

4299. SEC. 334. It must be taken when the juror appears, and before he is sworn, but the court may for good cause permit it to be taken after the juror is sworn, and before the jury is completed.

1. CHALLENGE TO JURORS—When Must Be Taken. *State v. Pritchard*, 15 Nev. 74.

2. SECTION 334 CONSTRUED. *State v. Pritchard*, 16 Nev. 102.

3. PEREMPTORY CHALLENGE AFTER JUROR SWORN. The allowance of a peremptory challenge to a juror who has been accepted and sworn is not a matter of right, and a refusal on the part of the court to allow it is not error. *State v. Anderson*, 4 Nev. 265.

Peremptory. How Taken.

4300. SEC. 335. A peremptory challenge may be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Peremptory Challenges, Number Of.

4301. SEC. 336. If the offense charged be punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to eight and the state to eight peremptory challenges. On a trial for any other offense the defendant is entitled to four and the state to four peremptory challenges. *As amended, Stats. 1865, 404; 1889, 85.*

Sections 334, 335, and 336 repealed, Stats. 1875, 117; repealing Act unconstitutional. *State v. McClear*, 11 Nev. 39.

Challenge for Cause.

4302. SEC. 337. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either: First, general, that the juror is disqualified from serving in any case; or, second, particular, that he is disqualified from serving on the case on trial.

1. CITIZENSHIP OF JUROR. *State v. Salge*, 1 Nev. 455.

2. CHALLENGE FOR CAUSE. Party challenging should specify ground. *State v. Squaires*, 2 Nev. 227; *State v. Chapman*, 6 Nev. 320.

General Causes of Challenge.

4303. SEC. 338. General causes of challenge are: First—A conviction for felony. Second—A want of any of the qualifications prescribed by the statute to render a person a competent juror. Third—Unsoundness of mind, or such defect in the faculties of the mind or the organs of the body as renders him incapable of performing the duties of a juror.

Particular Causes Of.

4304. SEC. 339. Particular causes of challenge are of two kinds: First—For such a bias as, when the existence of the facts is ascertained, in judgment of

law disqualifies the juror, and which is known in this Act as implied bias. Second—For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this Act as actual bias.

1. JUROR—INCOMPETENCY OF—CONSCIENTIOUS SCRUPLES. A juror who states that in a case where the punishment is death he would not find the defendant guilty on circumstantial evidence, is an incompetent juror. *State v. Pritchard*, 15 Nev. 74, 16 Nev. 101.

ALLOWANCE OF CHALLENGE NOT SUBJECT TO REVIEW. The allowing of challenges by the court for implied bias is not subject to review. (*State v. Larkin*, 11 Nev. 314, affirmed.) *Id.*

2. CONSCIENTIOUS OPINION—Particular Cause of Challenge. *State v. Hing*, 16 Nev. 307.

Challenge for Implied Bias, for What Taken.

4305. SEC. 340. A challenge for implied bias may be taken for all or any of the following causes, and no other: First—Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant. Second—Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages. Third—Being a party adverse to the defendant in civil action, or having complained against, or been accused by him in a criminal prosecution. Fourth—Having served on the grand jury which found the indictment, or on a Coroner's jury which inquired into the death of a person whose death is the subject of the indictment. Fifth—Having served on a trial jury which has tried another person for the offense charged in the indictment. Sixth—Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it. Seventh—Having served as a juror in a civil action brought against the defendant for the act charged as an offense. Eighth—Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged; *provided*, that such unqualified opinion or belief shall not have been formed or expressed or based upon the reading of newspaper accounts of the transaction. Ninth—If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall neither be permitted nor compelled to serve as a juror. *As amended, Stats. 1889, 83.*

Sections 339 and 340 amended, *Stats. 1875, 117*; amendments unconstitutional. *State v. McClear*, 11 Nev. 39.

1. COURT MAY DISMISS JUROR WHEN THERE IS ANY PROBABILITY OF DISQUALIFICATION. *State v. Kelley*, 1 Nev. 224.

2. ALLOWANCE OF CHALLENGE FOR IMPLIED BIAS—NOT SUBJECT OF REVIEW. The allowance of challenge for implied bias is not the subject of an exception. *State v. Hing*, 16 Nev. 307.

3. QUALIFIED OPINION OR BELIEF. A juror who has formed and expressed an opinion that was not unqualified, is not a disqualified juror, especially when he declares that he did not entertain any deliberate or fixed opinion or belief as to the guilt or innocence of the defendant. *State v. Raymond*, 11 Nev. 99.

CHALLENGE FOR IMPLIED BIAS MUST STATE THE GROUND OF CHALLENGE. *Id.*

CHALLENGE FOR CAUSE ERRONEOUSLY REFUSED. Not prejudicial error when peremptory challenge taken and all peremptory challenges not exhausted. *Id.*

4. JUROR—Opinion Upon Facts—When Not Disqualified. *State v. Carrick*, 16 Nev. 120.

5. IMPLIED BIAS—DEFENDANT'S CHARACTER. The fact that a juror had formed an unfavorable opinion of defendant's character will not sustain a challenge for implied bias. *State v. Davis*, 14 Nev. 440.

Exemption, Not Cause for Challenge.

4306. SEC. 341. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Challenge, How Taken.

4307. SEC. 342. In a challenge for an implied bias, one or more of the causes stated in section three hundred and forty must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court.

Amended, Stats. 1875, 117; amendment unconstitutional. *State v. McClear*, 11 Nev. 39.

Exceptions to Challenge.

4308. SEC. 343. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in sections three hundred and twenty-five and three hundred and twenty-six, except that if the exception be allowed the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

Trial of Challenge.

4309. SEC. 344. If the facts be denied, the challenge shall be tried as follows: First—If it be for implied bias, by the court. Second—If it be for actual bias, by triers.

Amended, Stats. 1875, 117; amendment unconstitutional. *State v. McClear*, 11 Nev. 39.

Triers, Who to Be.

4310. SEC. 345. The triers shall be three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

Oath of Triers.

4311. SEC. 346. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenging party, and to decide the same truly according to the evidence.

Sections 345 and 346 repealed, Stats. 1875, 117; repealing Act unconstitutional. *State v. McClear*, 11 Nev. 39.

Juror May Be Witness.

4312. SEC. 347. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge and shall be compelled to answer every question pertinent to the inquiry therein.

Other Testimony.

4313. SEC. 348. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

Court to Determine Law and Facts.

4314. SEC. 349. On the trial of a challenge for implied bias, the court shall determine the law and the facts, and shall either allow or disallow the challenge, and direct an entry accordingly on the minutes.

Instructions to Triers.

4315. SEC. 350. On the trial of a challenge for actual bias, when the evidence is concluded, the court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial, and that if, from the evidence, they believe him free from such a bias, they must find the challenge not true. The court shall give them no other instructions.

Decision Final.

4316. SEC. 351. The triers must thereupon find the challenge either true

or not true, and their decision is final. If they find it true, the juror shall be excluded.

Sections 350 and 351 repealed, Stats. 1875, 117; repealing Act unconstitutional. *State v. McClear*, 11 Nev. 39.

Challenges, Order Of.

4317. SEC. 352. All challenges to an individual juror, except peremptory, must be first taken by the defendant, and then by the people, and each party must exhaust all his challenges to each juror as he is called, before the other begins.

Challenges Taken Separately.

4318. SEC. 353. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: First, to the panel; second, to an individual juror for a general disqualification; third, to an individual juror for implied bias; fourth, to an individual juror for actual bias.

Peremptory Challenge.

4319. SEC. 354. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Sections 353 and 354 amended, Stats. 1875, 117; amendments unconstitutional. *State v. McClear*, 11 Nev. 39.

6—Trial.

Order of Proceedings of Trial.

4320. SEC. 355. The jury having been impaneled and sworn, the trial shall proceed in the following order: First—If the indictment be for felony, the Clerk must read the indictment and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. Second—The District Attorney or other counsel for the people must open the cause, and offer the evidence in support of the indictment. Third—The defendant or his counsel may then open the defense, and offer his evidence in support thereof. Fourth—The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause. Fifth—When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people must open and must conclude the argument. Sixth—The Judge shall then charge the jury, if requested by either party; he may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact; such charge shall be reduced to writing before it is given; and in no case shall any charge or instructions be given to the jury otherwise than in writing, unless by the mutual consent of the parties.

1. ARGUMENT, CLOSE OF, BELONGS TO STATE. *State v. Smith*, 10 Nev. 106.
2. COURT MAY GIVE INSTRUCTIONS ON ITS OWN MOTION. *State v. Pierce*, 8 Nev. 292.
3. READING FROM STATUTES NOT GIVING ORAL INSTRUCTIONS. *State v. Stewart*, 9 Nev. 121.
4. ORAL INSTRUCTIONS. The court cannot give any instruction verbally unless the prisoner assents, and that assent must appear affirmatively. *State v. Bonds*, 1 Nev. 33.

Order Departed From.

4321. SEC. 356. When the state of the pleadings require it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Two Counsel May Argue, When.

4322. SEC. 357. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, but in such case as well as in all others the counsel for the people must open and must conclude the

argument. If it be for any other offense, the court may in its discretion restrict the argument to one counsel on each side. *As amended, Stats. 1895, 14.*

ARGUMENT. Two attorneys for the state may close, notwithstanding objections. *State v. Stewart, 9 Nev. 121; State v. Pearce, 15 Nev. 188.*

Innocence Presumed.

4323. SEC. 358. A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

"Reasonable Doubt" defined. Sec. 4648.

Degrees of Guilt.

4324. SEC. 359. When it legally appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

Joint Trial.

4325. SEC. 360. When two or more defendants are jointly indicted for any offense, they shall be jointly tried, unless for good cause shown by the prosecution or defense, the court shall otherwise direct.

1. UNDER ABOVE SECTION, TWO OR MORE DEFENDANTS may be jointly indicted, jointly tried, and jointly sentenced. *Ex Parte Gafford, 24 Nev.*
2. SEPARATE TRIAL—WHEN MUST BE DEMANDED. A defendant, jointly indicted with another, who intends to demand a separate trial, must make his motion before the formation of the jury is commenced. *State v. McLane, 15 Nev. 345.*

GOOD CAUSE MUST BE SHOWN. *Id.*

State's Evidence.

4326. SEC. 361. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defense, on the application of the District Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

Codefendant May Be Witness.

4327. SEC. 362. When two or more persons are included in the same indictment and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged from the indictment, before the evidence shall be deemed closed, that he may be a witness for his codefendant.

Deemed Acquittal.

4328. SEC. 363. The order mentioned in the two last sections shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offense.

Rape, Proof Necessary.

4329. SEC. 364. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

RAPE—PENETRATION—PROOF REQUIRED. The slightest proof of penetration will justify submitting the question to the jury, and such proof can be inferred from circumstances. In this case there was proof of penetration. *State v. Depoister, 21 Nev. 107.*

Testimony of Accomplice.

4330. SEC. 365. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely show the commission of the offense or the circumstances thereof.

QUESTION NOT AS TO WEIGHT OF EVIDENCE, BUT WHETHER IT WAS CORROBORATIVE. *State v. Chapman, 6 Nev. 320.*

Greater Offense Than Charged—Proceeding.

4331. SEC. 366. If it appear by the testimony that the facts proved consti-

tute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offense.

Indictment Not Found.

4332. SEC. 367. If an indictment for the higher offense be dismissed by the grand jury, or be not found at or before the next term, the court shall again proceed to try the defendant on the original indictment.

Jury Discharged, When.

4333. SEC. 368. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

Defendant Discharged, When.

4334. SEC. 369. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this territory, it shall order the defendant to be discharged.

When Jurisdiction Is in Other County.

4335. SEC. 370. If the offense were committed within the exclusive jurisdiction of another district of this territory, the court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or if the offense be a misdemeanor only, it may admit him to bail in a recognizance, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the Sheriff of the county where the trial was had at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the recognizance.

To Transmit Papers.

4336. SEC. 371. In the case provided for in the last section, the Clerk shall forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission shall be chargeable to that county.

Defendant Discharged.

4337. SEC. 372. If the defendant be not arrested, as provided in section three hundred and seventy, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money, deposited instead of bail, shall be refunded, as the case may be, and the sureties in the recognizance shall be discharged.

Proceedings.

4338. SEC. 373. If he be arrested, the same proceedings shall be had thereupon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

When Offense Not Punishable by Law.

4339. SEC. 374. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court shall order that the defendant, if in custody, be discharged, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless, in the opinion of the court, a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

Submitted Anew.

4340. SEC. 375. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty-one and two hundred and eighty-two, both inclusive.

Court May Advise Acquittal.

4341. SEC. 376. If, at any time after the evidence on either side is closed, the court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the court for any cause prevent the jury from giving a verdict, except as provided in sections three hundred and sixty-one, three hundred and sixty-two, three hundred and sixty-six, and three hundred and sixty-eight.

When View May Be Had.

4342. SEC. 377. Whenever, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the Sheriff, to the place, which shall be shown to them by a person appointed by the court for that purpose.

Not to Speak to Jury.

4343. SEC. 378. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time.

1. CONSTRUCTION OF STATUTE—JURY TO VIEW PREMISES—DUTY OF JURY. In construing the provisions of Sections 377 and 378 of the Criminal Practice Act: *Held*, that the order of the court should specify the place to be inspected, and should designate some person who knows the place, to point it out to the jury. The person so designated, and none other, except the officer in charge, should conduct the jury to the spot, and should leave them to make their own observations, without any comment or explanation whatever. *State v. Lopez*, 15 Nev. 407.
2. VIEW OF THE PREMISES is not taking evidence in the case. It is means provided by the statute to enable the jury more satisfactorily to weigh the evidence given in court. When the action of the court is taken and the view is made on motion of the defendant, and no request or expression of a desire on his part to be present was made, his absence is not ground for new trial, nor is the absence of the Judge legal cause of complaint. *State v. Hartley*, 22 Nev. 342.

Juror May Disclose Knowledge.

4344. SEC. 379. If a juror have any personal knowledge respecting a fact in controversy in the case, he must declare the same in open court, during the trial. If, during the retirement of a jury, a juror declare any fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

Jury, How Kept—Oath of Officer.

4345. SEC. 380. The jury sworn to try an indictment for a misdemeanor may, at any time during the trial, in the discretion of the court be allowed to separate. In all cases, on the trial of an indictment for felony, the jurors sworn shall be kept together until they are finally discharged by the court from further consideration of the cause. At each adjournment or recess of the court, which may occur during the trial, the Sheriff or his deputy, shall keep the jury together in his charge, and it shall be the duty of the Sheriff, at the expense of the county, to provide a suitable place for the board and lodging of the jury. The court at each recess or adjournment during the trial, shall administer to the Sheriff, or his deputy, the following oath: "You do solemnly swear that you will, during this recess or adjournment (as the case may be), keep this jury together, and that you will return them into court at the opening thereof, and that in the meantime you will not allow any person to speak to them, or either of them, nor speak to

them or either of them, yourself, on the subject of the case now on trial, so help you God."

1. **SEPARATION OF JURY.** The fact that one of the jurors was where he could exchange a single word with a stranger without being overheard by the officer in charge is sufficient to establish a technical separation of the jury. *State v. Harris*, 12 Nev. 414.

IDEM—DUTY OF OFFICER. An officer in charge of a jury in a criminal case ought not to permit strangers to have access to a juror out of his sight and hearing, and thus afford an opportunity, however slight, for tampering with, or prejudicing, the juror. *Id.*

2. **SEPARATION OF JURY BY CONSENT.** Where jury separates by consent of counsel and no objection is made by defendant, verdict upheld. *State v. McMahon*, 17 Nev. 365.

Jury to Be Admonished.

4346. **SEC. 381.** The jury shall also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

FAILURE OF COURT TO ADMONISH JURY AT RECESS does not affect jury when accused is not injured thereby. *State v. Gray*, 19 Nev. 212.

Juror Sick.

4347. **SEC. 382.** If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

Questions of Law.

4348. **SEC. 383.** The court shall decide all questions of law which shall arise in the course of the trial.

Libel.

4349. **SEC. 384.** On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact.

Questions of Law and Fact.

4350. **SEC. 385.** On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury. And, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charge to Jury.

4351. **SEC. 386.** In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

1. **INSTRUCTIONS—Lengthy Discussion.** *State v. Waterman*, 1 Nev. 543.

2. **PROVINCE OF INSTRUCTIONS—Instruction in Manslaughter—Reviewed at Length.** *State v. Levine*, 17 Nev. 435.

3. **EXCEPTION NOT NECESSARY.** Under our statute it is not necessary that the defendant should except to the action of the court, in failing to give an instruction asked for. *State v. McNamara*, 3 Nev. 71.

NEGLECT TO GIVE INSTRUCTION SAME AS REFUSAL. *Id.*

CERTAIN INSTRUCTION IN THIS CASE—Joint Indictment. *Id.*

4. **COURT MAY INSTRUCT JURY IN CRIMINAL CASE ON ITS OWN MOTION.** *State v. Burns*, 8 Nev. 251; *State v. Ah Mook*, 12 Nev. 369.

COURT'S OWN CHARGE IN CRIMINAL CASE NOT DEEMED EXCEPTED TO. The charge given by a court on its own motion in a criminal case cannot be considered on appeal, unless it be properly carried up by bill of exceptions. *Id.*

5. **ARGUMENT OF PROSECUTING ATTORNEY—MISSTATEMENT OF LAW.** Misstatements of law made by the Prosecuting Attorney in his argument to the jury should be corrected by proper instructions and not by a motion to strike out. A motion to strike out in such a case affords no adequate relief. *State v. O'Keefe*, 23 Nev. 127.

6. INSTRUCTIONS MUST BE CONSIDERED AS AN ENTIRETY. *State v. Lindsey*, 19 Nev. 47; *State v. Donovan*, 10 Nev. 36; *State v. Raymond*, 11 Nev. 98; *State v. Pritchard*, 15 Nev. 74; *State v. McLane*, 15 Nev. 345.
7. INSTRUCTIONS—DEFENDANT SHOULD ASK FOR, WHEN. If the defendant desires the court to charge the jury upon any given point, it is his right and his business to prepare such an instruction, and ask the court to give it. *State v. Smith*, 10 Nev. 106; *State v. Davis*, 14 Nev. 407; *State v. St. Clair*, 16 Nev. 207; *State v. Hing*, 16 Nev. 307; *State v. McLane* 15 Nev. 345.
8. INSTRUCTIONS. Defendant has a right to have his instructions given when clearly law. *People v. Bonds*, 1 Nev. 33.
- COURT CANNOT INSTRUCT THE JURY AS TO THE EXISTENCE OR NON-EXISTENCE OF A DISPUTED FACT. *Id.*
9. CRIMINAL LAW—TESTIMONY OF DEFENDANT—INSTRUCTIONS. The court instructed the jury that in all cases the testimony of the defendant, in his own behalf, should be received "with great caution; for when one is being tried for a capital offense, the temptation to pervert or distort the facts in favor of himself is very great": *Held*, erroneous. *State v. Vasquez*, 16 Nev. 42.
10. CHARGE OF THE COURT—MURDER THE RESULT OF MALICE. The court after giving the statutory definition of murder and manslaughter, and the general definition of malice, charged the jury as follows: "From the foregoing, then, it will be seen that murder is the result of malice; manslaughter the result of sudden passion, heat of blood, anger, when the defendant is supposed not to be master of his own understanding": *Held*, not erroneous. *State v. Raymond*, 11 Nev. 98.
11. HOMICIDE—NOT JUSTIFIED BY PROVOCATION. The court charged the jury: "No provocation can justify or excuse homicide, but may reduce the offense to manslaughter. Words or actions, or gestures, however grievous or provoking, unaccompanied by an assault, will not justify or excuse murder; and when a deadly weapon is used, the provocation must be great to make the crime less than murder": *Held*, correct. *Id.*; *State v. Crozier*, 12 Nev. 300.
12. IRRELEVANT INSTRUCTION—When Prejudicial—Murder Case. *State v. Vaughan*. 22 Nev. 285.
- IMPROPER INSTRUCTION NOT CURED BY OTHERS THOUGH PROPER. *Id.*
13. INSANITY—BURDEN OF PROOF—PRESUMPTIONS. The court instructed the jury that the defendant "is presumed to be sane until the contrary is shown, and a doubt upon this question alone should not acquit, for insanity is an affirmative proposition, and the burden of proving it is upon the defense: *Held*, correct. *State v. Lewis*, 20 Nev. 334.
- PREPONDERANCE OF EVIDENCE. Insanity as a defense to crime must be established by a preponderance of evidence. *Id.*
14. INSTRUCTION TENDING TO SHOW INSANITY. Refused or given on motion of court, not reviewed by appellate court. *State v. Hartley*, 22 Nev. 342.
- INSTRUCTION REGARDING DEFENDANT'S TESTIMONY. *Held*, correct. *Id.*
- DEFENSE—Circumstances of Killing—Instruction Not Misleading. *Id.*
15. INSANITY AND INTOXICATION. Instructions given by the court to the effect that temporary insanity produced by intoxication does not destroy responsibility if the party, when sane and responsible, made himself voluntarily intoxicated. *Reviewed*, and held to be correct. *State v. Thompson*, 12 Nev. 140.
16. FORMS OF VERDICT AND DEFINITIONS GIVEN BY COURT. Defendant not prejudiced because court failed to give form for manslaughter. *State v. St. Clair*, 16 Nev. 207.
17. INTENT TO MURDER—USE OF DEADLY WEAPONS. An intent to murder cannot be conclusively inferred from the mere use of a deadly weapon, and an instruction to the jury to that effect in a murder trial is error. *State v. Newton*, 4 Nev. 410.
18. ACCIDENTAL SHOOTING—Instruction, Murder or Manslaughter: *Held*, correct. *State v. Kelley*, 1 Nev. 224.
19. HOMICIDE—JUSTIFICATION. Where there is any testimony to support the plea of justifiable homicide, the court has no right to withdraw that question from the jury. A refusal to instruct the jury thereon: *Held*, erroneous. *State v. Frazer*, 14 Nev. 210.
20. INSTRUCTION. DEGREE OF PROOF TO REBUT PRESUMPTION OF MURDER. Error to instruct jury that mitigating circumstances must be proven beyond a reasonable doubt, or by preponderating proof. *State v. McGinnis*, 5 Nev. 337.
- ACCUSED PERSON IS ENTITLED TO REASONABLE DOUBT, HOWEVER ARISING. *Id.*
21. INSTRUCTION AS TO GOOD CHARACTER OF DEFENDANT—When Properly Refused—Instruction as to Criminal Intent, When Properly Refused. *State v. McGinnis*, 6 Nev. 109.

22. CHARGING CIRCUMSTANTIAL TO BE SUPERIOR TO DIRECT EVIDENCE, ERROR. Where the court in a criminal case instructed the jury that "circumstantial evidence is more satisfactory than the testimony of a single individual, who swears he has seen a fact committed": *Held*, error. *State v. Van Winkle*, 6 Nev. 340.
 23. INSTRUCTION—NO OPTION. The jury may be instructed that if they find that the accused shot and killed the deceased while attempting to perpetrate a robbery on him, they had "no option but to find the perpetrator guilty of murder in the first degree." *State v. Gray*, 19 Nev. 212.
 24. INSTRUCTION that jury shall only consider the good character of defendant, when they have a reasonable doubt of his guilt, is not an erroneous instruction. *People v. Gleason*, 1 Nev. 173.
 25. AMBIGUOUS INSTRUCTION PROPERLY REFUSED—False Definition of Murder. *State v. Anderson*, 4 Nev. 265.
- CONSTITUTIONAL PROVISION AS TO CHARGING JURIES. The constitutional provision that "Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law," was intended to prevent Judges from charging that facts testified to are not established, but was not intended to prevent, and does not prevent, them from charging what would be the legal effect of facts if found to be established. *Id.*
26. INSTRUCTION MAY CONTAIN CORRECT PRINCIPLE OF LAW, but may be refused because not applicable to the case. *State v. Squaires*, 2 Nev. 226; *State v. Ah Loi*, 5 Nev. 99.
- ARSON. An instruction which assumes that the defendant could only be principal if he himself set the fire is erroneous, and should not be given. *Id.*
27. CHARGE OF THE COURT, MURDER CASE—MODIFYING AN INSTRUCTION, WHEN NOT ERRONEOUS. When the court in modifying a correct instruction does not alter its sense, the modification cannot be claimed to be erroneous. *State v. Smith*, 10 Nev. 106.
 28. INSTRUCTION IN MURDER CASE THAT CERTAIN FACTS WOULD NOT AMOUNT TO MORE THAN MANSLAUGHTER, and verdict of manslaughter found: *Held*, not erroneous. *State v. Hutchinson*, 7 Nev. 53.
 29. EXPLICIT INSTRUCTIONS—Reasonable Doubt. *State v. Davis*, 14 Nev. 440.
 30. CHARGE OF THE COURT ON EVIDENCE. On a trial for murder, if there is no evidence tending to establish the crime of manslaughter, the court may so inform the jury, and charge them not to consider the question. *State v. Donovan*, 10 Nev. 36.
 31. MURDER IN FIRST OR SECOND DEGREE OR ACQUITTAL. It is not error to charge a jury that they must find the prisoner guilty of murder in the first or second degree, or acquit, where there is no testimony offered which in any degree tends to show any fact or circumstances which could reduce the offense to manslaughter. *State v. Millain*, 3 Nev. 410.
 32. VOLUNTARY KILLING WITH DEADLY WEAPON, NOT NECESSARILY MURDER IN THE FIRST DEGREE. Contrary instruction held error. *State v. Lopez*, 15 Nev. 408.
 33. INSTRUCTION IN MURDER CASE that time of deliberation is not material, so long as there is determination to kill, to constitute murder in the first degree: *Held*, not prejudicial. *State v. Ah Mook*, 12 Nev. 369.
 34. CHARGE ASSUMING PROOF OF MATERIAL FACTS—Error—Retreat Not Necessary, When. *State v. Kennedy*, 7 Nev. 374.
 35. SELF-DEFENSE—Remarks of Judge in Refusing Instructions, Error. *State v. Warren*, 18 Nev. 459.
 36. ANTECEDENT THREATS ALONE DO NOT JUSTIFY HOMICIDE. *Held*, no error in instructing that there must have been some action on the part of the deceased at the time of the killing. *State v. Hall*, 9 Nev. 58.
 37. JUSTIFICATION OF HOMICIDE IN CASE OF COMBAT. Section 29 of Crimes Act does not apply. *State v. Ferguson*, 9 Nev. 106.
- CHARGE UNDER SECTION 28 OF CRIMES ACT. *Held*, error in this, that it assumes that defendant is without fault. *Id.*
38. SELF-DEFENSE IN CASE OF COMBAT, CANNOT TAKE ADVANTAGE OF INSTRUCTION. *State v. Smith*, 10 Nev. 106.
 39. CRIMES ACT, SECTION 28, AS AN INSTRUCTION. Where defense is self-defense, reading Section 26 not error. *State v. Stewart*, 9 Nev. 120.
 40. ASSAULT WITH INTENT TO COMMIT MURDER. The court instructed the jury to convict if it found that defendant made an assault with a deadly weapon upon the person named, about the time charged, and in such manner that the offense would have been murder in the second degree had the assault resulted in death: *Held*, unobjectionable. *State v. Keith*, 9 Nev. 15.

41. ASSAULT WITH INTENT TO KILL—INSTRUCTION. The court instructed the jury that "an assault with intent to kill, is an unlawful attempt, coupled with a present ability to kill another person under such circumstances as would constitute an unlawful killing had the death of the person assaulted actually resulted": *Held*, correct. *State v. Marks*, 15 Nev. 33.
- IDEM. The court instructed the jury "that, where an act in itself indifferent becomes criminal if done with a particular intent, then the intent must be proved and found; but when the act is in itself unlawful, the proof of justification or excuse lies on the defendant; and, in failure thereof, the law implies a criminal intent unless the proof on the part of the prosecution sufficiently manifests that the accused was justified or excused in committing the assault": *Held*, not error. *Id.*
42. FORGERY. Instruction as to person injured, reciting statute: *Held*, correct. *State v. Cleavland*, 6 Nev. 181.
43. ASSAULT WITH INTENT TO COMMIT ROBBERY. Instruction that jury must find some "visible act of robbery committed by defendant" properly refused. *State v. Glover*, 10 Nev. 24.
44. BURGLARY—INSTRUCTION. An instruction that if defendant entered the house and stole therefrom certain goods, it might be inferred that he entered with intent to steal: *Held*, correct. *State v. Watkins*, 11 Nev. 30.
- COURT MAY MODIFY TO REMOVE AMBIGUITY. *Id.*
45. LARCENY—INTENT—LUCRI CAUSA—INSTRUCTIONS. The court instructed the jury that if they believed that the defendant took the property "with the intent to permanently deprive the owner of the property, and without an intention to return the same, it was a felonious intent and the defendant is guilty": *Held*, correct. It is not essential that the taking should be with a view to pecuniary profit. *State v. Slingerland*, 19 Nev. 135.
- WHEN JUDGMENT WILL NOT BE REVERSED ON IMPROPER INSTRUCTION. Good character instruction not proper. *Id.*
46. LARCENY—Meaning of the Word "Indicating" in Instruction. *State v. Loveless*, 17 Nev. 424.
47. POSSESSION OF STOLEN PROPERTY—Instruction Properly Refused. *State v. Espinozel*, 30 Nev. 209.
48. REMARKS OF COURT—When Improper. *State v. Frazer*, 14 Nev. 210; *State v. Warren*, 18 Nev. 459.

Charge to Jury.

4352. SEC. 387. Either party may present to the court any written charge, and request that it may be given. If the court think it correct and pertinent, it shall be given; if not, it shall be refused.

Charge, Court to Indorse.

4353. SEC. 388. Upon each charge so presented and given, or refused, the court shall indorse its decision, and shall sign it. If part be given and part refused, the court shall distinguish, showing by the indorsement what part of the charge was given and what part refused.

1. INSTRUCTIONS PART OF RECORD. Instructions which are filed with the indorsement of the Judge thereon as to his action in giving or refusing them are a part of the record, and the action of the court thereon may be reviewed without any formal bill of exceptions. *People v. Gleason*, 1 Nev. 173.
2. PROPER PRACTICE UNDER ABOVE SECTION. *State v. O'Connor*, 11 Nev. 425.

Case Submitted.

4354. SEC. 389. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

Defendant May Be Committed.

4355. SEC. 390. Where a defendant, having given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county to abide the

judgment or further order of the court, and he shall be committed and held in custody accordingly.

Room Provided for Jury.

4356. SEC. 391. A room shall be provided by the Sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery, unless the same have been already furnished by the county. The court may order the Sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

Sheriff to Provide for Jury.

4357. SEC. 392. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided by the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.

Papers Which Jury May Take.

4358. SEC. 393. Upon retiring for deliberation the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession, and also the instructions of the court.

Jury May Take Notes.

4359. SEC. 394. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

Jury May Ask for Information.

4360. SEC. 395. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the District Attorney and the defendant or his counsel.

May Be Discharged.

4361. SEC. 396. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

DISCHARGE OF JUROR AFTER JURY IS SWORN—No Necessity for Discharge of Whole Jury—
No Evidence of Defendant's Plea of Former Jeopardy. *State v. Pritchard*, 16 Nev. 101.

Not Discharged, When.

4362. SEC. 397. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court shall deem proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

POWER OF COURT TO DISCHARGE A JURY BEFORE VERDICT—Jury Failing to Agree. *Ex Parte Maxwell*, 428.

Discharge Without Verdict, Effect Of.

4363. SEC. 398. In all cases where a jury are discharged or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term.

Adjournment.

4364. SEC. 399. While the jury are absent, the court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Final Adjournment.

4365. SEC. 400. A final adjournment of the court discharges the jury.

Expenses of Trial.

4366. SEC. 401. When two or more counties are joined for judicial purposes, the expenses accruing from the trial of cases shall be assigned to the county in which the offense was committed for which trial was had.

Verdict.

4367. SEC. 402. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged without giving a verdict. In such a case, the cause must be again tried at the same or another term.

Defendant to Appear.

4368. SEC. 403. If the indictment be for a felony, the defendant must, before a verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Jury to Acknowledge Verdict.

4369. SEC. 404. If the jury appear, they shall be asked by the court or the Clerk whether they have agreed upon a verdict, and if the foreman answer in the affirmative, they shall, on being required, declare the same.

General or Special Verdict.

4370. SEC. 405. The jury may either render a general verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

General Verdict.

4371. SEC. 406. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

1. **MURDER CASE.**—Verdict of Guilty Must State the Degree. *State v. Rover*, 10 Nev. 348; *State v. Lindsey*, 19 Nev. 47.
2. **THE COURT MAY ALWAYS SUGGEST TO THE JURY A CORRECTION OF THEIR VERDICT AS TO FORM.** *State v. Waterman*, 1 Nev. 543.
3. **VERDICT RECOMMENDING DEFENDANT TO THE MERCY OF THE COURT—DUTY OF JURY.** *Held*, that the court should have disregarded the request of the jury for instructions as to their duty in recommending the defendant to the mercy of the court. The duty of the jury is to find a verdict as to the guilt or innocence of the defendant. *State v. Vasquez*, 16 Nev. 42.
4. **VERDICT—RECOMMENDATION TO MERCY—REFUSAL TO STRIKE OUT.** A recommendation to mercy constitutes no proper part of a verdict; but a refusal of the court to strike it out is not prejudicial to defendant. *State v. Gray*, 19 Nev. 212; *State v. Stewart*, 9 Nev. 120.
5. **IMPORT OF VERDICT OF "GUILTY."** It is in effect verdict of guilty as charged in the indictment. *State v. Lawry*, 4 Nev. 161.
6. **VERDICT OF ACQUITTAL, BAR.** A verdict of acquittal on a good indictment puts an end to all further prosecution for the offense charged in that indictment, notwithstanding any errors that may have been committed during the progress of the trial. *State v. Hall*, 3 Nev. 172.
7. **VERDICT OF NOT GUILTY, BAR.** A defendant tried on a criminal charge and found not guilty by a jury cannot again be put on trial for the same offense. *State v. Herrick*, 3 Nev. 259.

Special Verdict.

4372. SEC. 407. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Reduced to Writing.

4373. SEC. 408. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Form of Special Verdict.

4374. SEC. 409. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

Judgment on, How Given.

4375. SEC. 410. The court shall give judgment upon the special verdict as follows: First—If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted, as provided in section four hundred and twelve, under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offense charged, or of any offense of which he could be so convicted under the indictment, judgment of acquittal shall be given. Second—If the plea be a former conviction or acquittal of the same offense, the court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

New Trial.

4376. SEC. 411. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusion of facts from the evidence as established to their satisfaction, the court shall order a new trial.

Guilty of Any Offense Included in One Charged.

4377. SEC. 412. In all cases the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense charged.

1. APPLICATION OF ABOVE SECTION IN BURGLARY CASE. *State v. Watkins*, 11 Nev. 34.

2. APPLICATION OF ABOVE SECTION IN RAPE CASE. *State v. Pickett*, 11 Nev. 255.

3. ASSAULT WITH DEADLY WEAPON, ETC., INCLUDED IN "ASSAULT WITH INTENT TO MURDER." *State v. Robey*, 8 Nev. 312; *State v. Collyer*, 17 Nev. 275.

Verdict, Character Of.

4378. SEC. 413. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict Reconsidered.

4379. SEC. 414. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after such reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Court May Order Reconsideration.

4380. SEC. 415. If the jury render a verdict which is neither a general nor a special verdict, as defined in sections four hundred and six and four hundred and seven, the court may direct them to reconsider it, and it shall not be recorded

until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Persistence of Jury.

4381. SEC. 416. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

Jury May Be Polled.

4382. SEC. 417. When a verdict is rendered, and before it is recorded, the jury may be polled; on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

Verdict to Be Recorded.

4383. SEC. 418. When the verdict is given, and is such as the court may receive, the Clerk must immediately record it in full on the minutes, and must read it to the jury and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

VERDICT MAY BE RECORDED ON SUNDAY. *State v. Rover*, 13 Nev. 23.

Verdict of Acquittal.

4384. SEC. 419. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given, except that where the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred in the same manner and with like effect as provided in sections three hundred and seventy-four and three hundred and seventy-five.

Verdict of Guilty.

4385. SEC. 420. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officers of the county, to await the judgment of the court upon the verdict. If so committed, his bail shall be exonerated, or if money be deposited instead of bail, it shall be refunded to the defendant.

7—Proceeding After Trial and Before Judgment.

Bill of Exceptions.

4386. SEC. 421. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the court upon a matter of law in any of the following cases: First—In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias. Second—In admitting or rejecting witnesses or testimony, or in charging the triers of a challenge to a juror for actual bias. Third—In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

1. **APPEAL—DISMISSAL—BILL OF EXCEPTIONS.** An appeal presented without any statement or bill of exceptions will be dismissed. (*State v. Fellows*, 8 Nev. 311, affirmed.) *State v. Lamb*, 20 Nev. 181.
2. **BILL OF EXCEPTIONS—REVIEW OF EVIDENCE.** There is no provision of the statute that will authorize this court to review or examine the evidence in a criminal case, unless it is embodied in a bill of exceptions. *State v. Larkin*, 11 Nev. 314; *State v. Mills*, 12 Nev. 403; *State v. Rigg*, 10 Nev. 284; *State v. Potts*, 20 Nev. 389.

3. **BILL OF EXCEPTIONS.** It is the duty of the Clerk to attach the bill of exceptions to the rest of the judgment roll before it is filed, just as it was left by the Judge who signed it. He must not add to it, or subtract from it, anything whatever. *State v. Ah Mook*, 12 Nev. 369.
4. **CHARGE OF THE COURT MUST BE EMBODIED IN A BILL OF EXCEPTIONS.** The charge given by the court of its own motion is not a part of the record unless it is included in the bill of exceptions. *Id.*; *State v. Forsha*, 8 Nev. 137; *State v. Burns*, 8 Nev. 251; *State v. Rover*, 11 Nev. 343.
5. **IDEM—REPORTER'S NOTES.** The reporter's notes of the proceedings of a trial can only be considered when adopted by the court as correct, and included in a bill of exceptions settled and signed by the Judge. *State v. Larkin*, 11 Nev. 314.
6. **BILL OF EXCEPTIONS.** The bill of exceptions, properly settled and signed by the Judge, together with the rest of the record as provided for in Section 450, is all that the supreme court will notice in the examination of a criminal case on appeal. *State v. Mills*, 12 Nev. 403; *State v. Johnson*, 12 Nev. 121; *State v. Roderigas*, 7 Nev. 328; *State v. McMahon*, 17 Nev. 365; *State v. Baker*, 8 Nev. 141; *State v. Ah Hung*, 11 Nev. 428; *State v. McLane*, 15 Nev. 346; *State v. Darling*, 4 Nev. 413; *State v. Wilson*, 5 Nev. 43.

Exceptions by Prosecution.

4387. SEC. 422. The exceptions may be taken by the District Attorney, or other counsel for the people, to a decision of the court upon a matter of law in any of the cases specified in the third subdivision of the preceding section.

How Settled—Time For.

4388. SEC. 423. A bill containing the exceptions must be settled and signed by the Judge, and filed with the Clerk within ten days after the trial of the cause, unless further time be granted by said Judge, or by a Judge of the Supreme Court.

1. **CRIMINAL PRACTICE—TIME OF SETTLEMENT OF BILL OF EXCEPTIONS.** Section 423, requiring bills of exception to be settled, signed and filed within ten days after trial, is directory; but if not so settled and signed within the time prescribed, some reasonable excuse should be given for the delay. *State v. Baker*, 8 Nev. 141; *State v. Salge*, 1 Nev. 455.
2. **BILL OF EXCEPTIONS—HOW AUTHENTICATED.** A bill of exceptions must be authenticated by the signature of the Judge. *State v. Huff*, 11 Nev. 17; *People v. Gleason*, 1 Nev. 173.
3. **SETTLEMENT OF, ON MOTION FOR NEW TRIAL.** The bill of exceptions, or statement, may be settled by the Judge after the motion for a new trial is decided. *State v. Huff*, 11 Nev. 17.
4. **BILL OF EXCEPTIONS—SETTLEMENT AND SIGNING—WHAT IS SUFFICIENT.** Where the record on appeal does not show a settlement of the bill of exceptions, such fact will be presumed from the signature of the trial Judge thereto attached. *State v. Campbell*, 20 Nev. 122.

Manner of Settling Bill of Exceptions.

4389. SEC. 424. The bill of exceptions shall contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the Judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised. If the Judge in any case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the supreme court, for leave to prove the same. The application and proof shall be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the Chief Justice, or, in his absence or inability to act, by one of the Associate Justices, to be correct, and filed with the Clerk of the court in which the action was tried, and when so filed it shall have the same force and effect as if settled by the Judge who tried the cause. If the Judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or, in the event of his failure or refusal to do so, either party may, as provided in this section, apply to the supreme court for leave to prove the same. *As amended, Stats. 1885, 46.*

SUPREME COURT HAS NO POWER TO SETTLE STATEMENT EXCEPT BY STATUTE. *State v. Warren*, 18 Nev. 459.

When to Be Filed.

4390. SEC. 425. The bill of exceptions must be filed with the Clerk of the Court as soon as it is signed by the Judge.

Written Charges.

4391. SEC. 426. When any written charge has been presented and given, or refused, the question or questions presented in such charge need not be excepted to, nor embodied in a bill of exceptions, but the written charge itself, with the indorsement showing the action of the court, shall form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal in like manner as if presented in a bill of exceptions.

SECTION 426 DOES NOT APPLY TO CHARGE GIVEN BY COURT ON ITS OWN MOTION. *State v. Forsha*, 8 Nev. 137; *State v. Burns*, 8 Nev. 251; *State v. Rover*, 11 Nev. 343; *State v. Ah Mook*, 12 Nev. 369.

New Trial.

4392. SEC. 427. A new trial is a reëxamination of the issue in the same court before another jury, after a verdict has been given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

Power to Grant New Trial.

4393. SEC. 428. The court in which a trial is had upon the issue of fact, has power to grant a new trial where a verdict has been rendered against the defendant upon his application, in the following cases only: First—When the trial has been had in his absence, if the indictment be for felony. Second—When the jury has received any evidence out of court other than that resulting from a view, as provided in section three hundred and seventy-seven. Third—When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth—When the court has misdirected the jury in a matter of law. Sixth—When the verdict is contrary to law or evidence. But no more than two trials shall be granted for this cause alone. *As amended, Stats. 1869, 67.*

1. AFFIDAVIT FOR NEW TRIAL IN CRIMINAL CASES. The first, second, third, and fourth grounds for new trial in criminal cases, under Section 428, may be presented simply by affidavit, without either statement or bill of exceptions. *State v. Stanley*, 4 Nev. 71.
2. DISQUALIFICATION OF JUROR—WHEN NOT GROUND FOR NEW TRIAL. The fact that after a verdict of guilty has been rendered, the accused ascertains for the first time that before the jury was impaneled a juror had formed and expressed an opinion as to his guilt, is not a ground for a new trial. *State v. Marks*, 15 Nev. 33.
3. GROUNDS FOR NEW TRIAL—RECEIVING EVIDENCE OUT OF COURT. When the jury arrived at the premises, they found a person who had never been sworn as a witness in the case. This person, in response to questions addressed him by members of the jury, pointed out to the jury all the special features of the premises: *Held*, a violation of the statute and a denial of the right of the defendant to be confronted with the witnesses against him. *State v. Lopez*, 15 Nev. 409.

Application, When Made.

4394. SEC. 429. The application for a new trial must be made before the judgment is entered in the cause.

Motion in Arrest of Judgment.

4395. SEC. 430. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or a verdict against the defendant on a plea of former conviction or acquittal. It may be founded on any of the defects of the indictment mentioned in section two hundred and ninety-four. *As amended, Stats. 1875, 119.*

Judgment Arrested.

4396. SEC. 431. The court may also, on its own view of any of these defects, arrest the judgment without motion.

When Motion Made.

4397. SEC. 432. The motion must be made before or at the time when the defendant is called for judgment.

Effect of Allowance.

4398. SEC. 433. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

MOTION IN ARREST OF JUDGMENT. A motion in arrest of judgment can only be sustained upon the ground that the court has no jurisdiction over the subject of the indictment, or that the facts stated do not constitute a public offense. *State v. O'Connor*, 11 Nev. 416.

Proceedings After Allowance of Arrest of Judgment.

4399. SEC. 434. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment. If the evidence show him guilty of another offense, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offense, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

*8—Judgment and Execution.***Time for Pronouncing Judgment.**

4400. SEC. 435. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

What Time to Be Appointed.

4401. SEC. 436. The time appointed shall be at least two days after the verdict, if the court intend to remain in session so long; or, if not, as remote a time as can reasonably be allowed. But in no case shall judgment be rendered in less than six hours after the verdict.

Presence of Defendant.

4402. SEC. 437. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence.

Defendant Brought Into Court.

4403. SEC. 438. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer shall do so accordingly.

Failing to Appear.

4404. SEC. 439. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the Clerk to issue a bench warrant for his arrest.

Bench Warrant Issued to Several Counties.

4405. SEC. 440. The Clerk, on the application of the District Attorney, may,

accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Form of Bench Warrant.

4406. SEC. 441. The bench warrant shall be substantially in the following form:

County of----- The People of the United States of the Territory of Nevada, to any Sheriff, Constable, Marshal, or policeman in this territory: A. B. having been on the-----day of-----, A. D. 18--, duly convicted in the district court of the district of-----, of the crime of [designating it generally]; you are therefore commanded forthwith to arrest the above named A. B. and bring him before that court for judgment, or if the court have adjourned for the term, that you deliver him into the custody of the Sheriff of the county of----- Given under my hand with the seal of said court affixed, this the---- day of-----, A. D. 18-- By order of the court. [Seal.] E. F., Clerk.

How Served.

4407. SEC. 442. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by a magistrate of that county.

Arrest of Defendant.

4408. SEC. 443. Whether the bench warrant be served in the county in which it was issued, or in another county, the officer shall arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Proceedings on Judgment.

4409. SEC. 444. When the defendant appears for judgment, he shall be informed by the court, or by the Clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him.

Causes Against Judgment.

4410. SEC. 445. He may show, for cause against the judgment: First—That he is insane; and if, in the opinion of the court, there be reasonable grounds for believing him to be insane, the question of his insanity shall be tried, as provided in sections five hundred and seventy-two to five hundred and seventy-five, both inclusive. If, upon the trial of that question, the jury find that he is of sound mind, judgment shall be pronounced; but, if they find him insane, he shall be committed to the custody of some proper and suitable person until he become sane, and when notice is given of that fact, as provided in section five hundred and seventy-nine, he shall be brought before the court for judgment. Second—That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

Rendition of Judgment.

4411. SEC. 446. If no sufficient cause be alleged or appear to the court why judgment should not be pronounced, it shall thereupon be rendered.

1. **CLERK SHOULD PUT JUDGMENT IN FORM.** When adopted by court, it is part of record. *Ex Parte Salge*, 1 Nev. 449.
2. **NO VALID JUDGMENT EXCEPT AT PRESCRIBED TIME AND PLACE.** It is indispensable to the validity of a judgment that it be rendered at the time and place prescribed by law. *State v. Roberts*, 8 Nev. 239.
3. **JUDGMENT, WHEN NOT VOID.** A judgment which does not specify any time for the imprisonment to commence is not void. The better practice is not to fix the commencement of the term, but merely to state its duration and place of confinement. *State v. Smith*, 19 Nev. 107.

Two or More Offenses.

4412. SEC. 447. If the defendant have been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

May Order Imprisonment.

4413. SEC. 448. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every two dollars of the fine, or in that proportion.

Lien of Judgment.

4414. SEC. 449. A judgment that the defendant shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

STATUTES APPLICABLE TO CASES OF CONTEMPT. The provisions of Section 449, and of the "Act in relation to fines," apply to all cases of contempt, when criminal, as well as other misdemeanors. *Ex Parte Sweeney*, 18 Nev. 74.

Entry of Judgment—What to State.

4415. SEC. 450. When judgment upon a conviction is rendered, the Clerk shall enter the same in the minutes, stating briefly the offense for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action: First—A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon. Second—The indictment and a copy of the minutes of the plea of, or demurrer. Third—A copy of the minutes of any challenge which may have interposed to the panel of the trial jury, or an individual juror, and the proceedings thereon. Fourth—A copy of the minutes of the trial. Fifth—A copy of the minutes of the judgment. Sixth—The bill of exceptions, if there be one. Seventh—The written charges asked of the court, if there be any.

1. **DUTY OF CLERK IN PREPARING RECORD.** The papers that constitute the record or judgment roll in a criminal case, are specified in Section 450, and it is the duty of the Clerk to fasten them together and file them within five days after the entry of a judgment of conviction. *State v. Ah Mook*, 12 Nev. 369.

2. **RECORD IN CRIMINAL CASE.** The record in a criminal case consists only of such matter as is required by Sections 450 and 480. *State v. Rover*, 13 Nev. 17.

Authority for Execution.

4416. SEC. 451. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.

Execution for Fine.

4417. SEC. 452. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

For Imprisonment.

4418. SEC. 453. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant shall forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

Execution of Death Sentence.

4419. SEC. 454. When judgment of death is rendered, a warrant, signed by the Judge and attested by the Clerk, under the seal of the court, shall be drawn and delivered to the Sheriff; it shall state the conviction and judgment, and

appoint a day on which the judgment shall be executed, which shall not be more than sixty days from the time of the judgment.

DEATH PENALTY—TIME OF EXECUTION FIXED BY WARRANT. Under the criminal law it is the warrant and not the judgment, which fixes the time for executing the death sentence; and the court may at any time issue the warrant in due form of law. *State v. Summers*, 9 Nev. 269.

Transmitted to Governor.

4420. SEC. 455. The Judge of the court at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the Governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Opinion of Supreme Court.

4421. SEC. 456. The Governor may thereupon require the opinion of the Justices of the Supreme Court and the Attorney-General, or any of them, upon the statement so furnished.

Suspension of Judgment of Death.

4422. SEC. 457. No Judge, court, or officer other than the Governor, can suspend the execution of a judgment of death, except the Sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate court, and any Judge thereof in vacation, may suspend the execution until the appeal is heard and determined.

Inquiry Into Sanity.

4423. SEC. 458. If after judgment of death there be good reason to suppose that the defendant has become insane, the Sheriff of the county, with the concurrence of the Judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the District Attorney.

Proceedings of Inquisition.

4424. SEC. 459. The District Attorney shall attend the inquisition and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

Certificate of Inquisition.

4425. SEC. 460. A certificate of the inquisition shall be signed by the jurors and the Sheriff, and filed with the Clerk of the court in which the conviction was had.

Proceedings of Inquisition.

4426. SEC. 461. If it be found by the inquisition that the defendant is sane, the Sheriff shall execute the judgment; but if it be found that he is insane, the Sheriff shall suspend the execution of the judgment until he receive a warrant from the Governor or from the Judge of the court by which the judgment was rendered, directing execution of the judgment.

Effect of Finding.

4427. SEC. 462. If the inquisition find that the defendant is insane, the Sheriff shall immediately transmit the same to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Inquiry Into Pregnancy of Female Convict.

4428. SEC. 463. If there be good reason to suppose that a female, against whom a judgment of death is rendered, is pregnant, the Sheriff of the county, with the concurrence of the Judge of the court by which the judgment was ren-

dered, may summon a jury of three physicians to inquire into the supposed pregnancy; immediate notice thereof shall be given to the District Attorney, and the provisions of sections four hundred and fifty-nine and four hundred and sixty shall govern the proceedings upon the inquisition.

Effect of Finding.

4429. SEC. 464. If it be found by the inquisition that such female is not pregnant, the Sheriff shall execute the judgment. If it be found that she is pregnant, the Sheriff shall suspend the execution of the judgment, and transmit the inquisition to the Governor.

Governor May Order Execution.

4430. SEC. 465. When the Governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Judgment of Death Not Executed.

4431. SEC. 466. If for any reason a judgment of death shall not have been executed, and the same remain in force, the court in which the conviction was had, on the application of the District Attorney, shall order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued. *Amended - p 425 - St 1907*

Execution of Judgment.

4432. SEC. 467. Upon the defendant being brought before the court, it shall inquire into the facts, and if no legal reason exist against the execution of the judgment, shall make an order to the Sheriff of the proper county to execute the judgment at the time specified therein, and the Sheriff shall execute the judgment accordingly. *Amended - p 425 - St 1907*

Death Penalty, How Inflicted.

4433. SEC. 468. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead, within the inclosed limits of the jail, and when such inclosure does not exist, so as to screen the execution from public gaze, a suitable and efficient inclosure shall be provided by the County Commissioners of the county in which the execution takes place. *As amended, Stats, 1875, 53.*

9—Appeal.

To and From What Courts.

4434. SEC. 469. The party aggrieved in a criminal action, whether that party be the people or the defendant, may appeal as follows: First—To the probate court of the county from a final judgment of the justice's court. Second—To the supreme court from a final judgment of the district court in all criminal cases. Also, from an order of the district court allowing a demurrer granting or refusing a new trial.

1. JURISDICTION OF SUPREME COURT—CRIMINAL CASES—APPEAL. In construing Art. VI., Sec. 4, of the constitution: *Held*, that the right of appeal in criminal cases is restricted to cases where the punishment adjudged is a sentence to confinement in the state prison, or to death. *State v. McCormick*, 14 Nev. 347; *State v. Quinn*, 16 Nev. 89.
2. MANNER OF CARRYING UP ALLEGED ERRORS ON APPEAL. Alleged errors in a charge or instruction can only be brought to the attention of the supreme court in one of three ways: Either by being embodied in a bill of exceptions, or in a settled statement, or indorsed by the Judge as provided by Section 426 of the Practice Act; and unless presented in one of these ways the supreme court will not notice them. *State v. Darling*, 4 Nev. 413.
3. APPEAL BY STATE—Bill of Exceptions Required. *State v. Murphy*, 21 Nev. 332.
4. JUDGMENT FINAL. An order of the district court quashing an indictment, discharging the defendant, and exonerating his bail, is a final judgment from which an appeal may be taken. *State v. Logan*, 1 Nev. 510.

5. **APPEAL—INSUFFICIENCY OF EVIDENCE.** A judgment in a criminal case will not be disturbed by the supreme court on the ground of insufficiency of the evidence, if there be any evidence tending to prove the allegations of the indictment. *State v. McGinnis*, 6 Nev. 109.
6. **OBJECTION TO INDICTMENT IN APPELLATE COURT.** An objection to an indictment on the grounds that it does not state facts sufficient to constitute a public offense may be taken for the first time in the appellate court, and is not waived by a failure in the district court to make the point on demurrer or on motion in arrest of judgment. *State v. Trolson*, 2 Nev. 419.
7. **APPEAL FROM NEW TRIAL ORDER—Too Late After Appeal From Judgment Disposed Of.** *State v. Summers*, 9 Nev. 399.

Questions of Law.

4435. SEC. 470. The appeal to the supreme court from the district court can be taken in questions of law alone.

On Appeal.

4436. SEC. 471. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Review.

4437. SEC. 472. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.

When Taken.

4438. SEC. 473. An appeal must be taken within three months after the judgment is rendered. *As amended, Stats. 1875, 119; 1877, 53.*

How Taken.

4439. SEC. 474. An appeal must be taken by the service of a notice in writing on the Clerk of the court in which the action was tried, stating that appellant appeals from the judgment.

Notice.

4440. SEC. 475. If the appeal be taken by the defendant, a similar notice must be served on the District Attorney.

Notice to Defendant.

4441. SEC. 476. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the district; or, if not, on the counsel, if any, who appear for him on trial, if he be living within the district. If such service, after due diligence, cannot be made, the appellate court, upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time as it may deem proper.

Deemed Perfected.

4442. SEC. 477. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

Shall Not Affect Judgment.

4443. SEC. 478. An appeal taken by the state shall in no case stay or affect the operation of a judgment in favor of the defendant; *provided*, if the appeal by the state be from an order sustaining a demurrer to an indictment, and upon such appeal said order is reversed, the defendant shall thereupon be liable to arrest and trial upon said indictment. *As amended, Stats. 1889, 24.*

No Stay of Execution.

4444. SEC. 479. No appeal from a judgment of conviction, unless it be one imposing a fine only, shall stay the execution of the judgment, but the defendant, if in custody, shall remain in custody to abide the judgment upon the appeal, unless admitted to bail, as prescribed in section five hundred and two.

Record and Notice Transmitted—Time For.

4445. SEC. 480. Upon the appeal being taken, the Clerk with whom the

notice of appeal is filed, must, within ten days thereafter, without charge, prepare and transmit to the Clerk of the Supreme Court a copy of the notice of appeal and of the record in said action, and if the appeal be by the state from an order sustaining a demurrer to an indictment, the Clerk shall within said time likewise prepare and forward a certified copy of the indictment, demurrer, order of the court sustaining said demurrer, and notice of appeal, which copy shall constitute the record on appeal. *As amended, Stats. 1889, §4.*

1. APPEAL FROM ORDER SUSTAINING DEMURRER TO INDICTMENT. *State v. Fellows*, 8 Nev. 311.

2. APPEAL FROM ORDER GRANTING NEW TRIAL—What Transcript on Appeal Must Show—Certificate of Clerk. *State v. Stanley*, 4 Nev. 71.

Dismissing Appeal.

4446. SEC. 481. If the appeal be irregular in any substantial particular, but not otherwise, the appellate court may, on a day in term, on motion of the respondent, upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.

Dismissal, When.

4447. SEC. 482. The court may, also, upon like motion, dismiss the appeal, if the return be not made as provided in section four hundred and eighty, unless for good cause it enlarge the time for that purpose.

Appeal, When Tried.

4448. SEC. 483. All appeals in criminal cases shall be tried and determined at the first term of the appellate court after the record is filed.

Proceedings.

4449. SEC. 484. Judgment of affirmance may be granted without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondent fail to appear.

State v. Myatt, 10 Nev. 163; *State v. Chin Wah*, 12 Nev. 118.

Number of Counsel.

4450. SEC. 485. Upon the argument of the appeal, if the offense be punishable with death, two counsel shall be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

Appellate Court.

4451. SEC. 486. The defendant need not appear in the appellate court.

Technical Errors.

4452. SEC. 487. After hearing the appeal, the court shall give judgment without regard to technical error or defect which do not affect the substantial rights of the parties.

Extent of Judgment.

4453. SEC. 488. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

NEW TRIAL—POWER OF COURT TO GRANT. Where the defendant in a criminal case is convicted and appeals, and the judgment is reversed: *Held*, that this court may order a new trial, although the defendant did not move for a new trial and denies the power of the court to grant it. *State v. Rover*, 10 Nev. 388.

New Trial.

4454. SEC. 489. When a new trial is ordered, it must be directed to be had in the court of the district from which the appeal was taken.

Reversal of Judgment.

4455. SEC. 490. If a judgment against the defendant be reversed, without ordering a new trial, the appellate court shall direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

On Affirmance.

4456. SEC. 491. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court shall direct.

Judgment, How Entered.

4457. SEC. 492. When the judgment of the appellate court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the Clerk of the court from which the appeal was taken.

Papers to Remain in Appellate Court.

4458. SEC. 493. The papers returned to the appellate court shall there remain of record, and shall not be remitted to the court below.

Orders After Remittitur.

4459. SEC. 494. After the certificate of judgment has been remitted, as provided in section four hundred and ninety-two, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted.

*10—Bail.***Defined.**

4460. SEC. 495. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

Taking of Bail.

4461. SEC. 496. The taking of bail consists in the acceptance by a competent court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of the United States of the Territory of Nevada a specified sum.

Admission to Bail.

4462. SEC. 497. A person charged with an offense may be admitted to bail before conviction, as follows: First—As a matter of discretion in all cases where the punishment is death. Second—As a matter of right in all other cases.

When Not Admitted.

4463. SEC. 498. No person shall be admitted to bail where he is charged with an offense punishable with death, when the proof is evident or the presumption great.

1. MURDER—When Defendant Entitled to Release on Bail—Constitution and Statutes Construed. *Ex Parte Finlen*, 20 Nev. 141.
2. MURDER—ADMISSION TO BAIL. Court has right to hear testimony and decide for itself. *Ex Parte Isbell*, 11 Nev. 295.

Notice to District Attorney.

4464. SEC. 499. When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable to be given to the District Attorney of the county where the examination is had.

After Conviction.

4465. SEC. 500. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail: First—As a matter of right, where the appeal is from a judgment imposing a fine only. Second—As a matter of discretion in all other cases.

RECOGNIZANCE TAKEN TO STAY EXECUTION OF JUDGMENT BEFORE APPEAL, *VOID*. *State v. Murphy*, 23 Nev. 403.

Before Conviction.

4466. SEC. 501. Before conviction, a defendant may be admitted to bail: First—For his appearance before a magistrate, on the examination of the charge, before being held to answer. Second—To appear at the court to which the magistrate is required, by section one hundred and seventy-three, to return the depositions and statement upon the defendant being held to answer after examination. Third—After indictment, either before the bench warrant issued for his arrest, or upon an order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

Bail on Appeal.

4467. SEC. 502. After conviction, and upon an appeal, the defendant may be admitted to bail as follows: First—If the appeal be from a judgment imposing a fine only, or the recognizance of bail, that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal be dismissed. Second—If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

SECTION CONSTRUED. *State v. Murphy*, 23 Nev. 400.

When Held to Answer.

4468. SEC. 503. When the defendant has been held to answer, as provided in section one hundred and sixty-one, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

Bail, How Put In—Form of Recognizance.

4469. SEC. 504. Bail is put in by a written recognizance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate in substantially the following form: "An order having been made on the ____ day of _____, A. D. 18__, by A. B., a Justice of the Peace of _____ county (or as the case may be), that C. D. be held to answer upon a charge of [stating briefly the nature of the offense], upon which he has been duly admitted to bail in the sum of _____ dollars, we, E. F. and G. H. [stating their place of residence], hereby undertake that the above named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and, if convicted, shall appear for judgment and render himself in execution thereof, or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of _____ dollars [inserting the sum in which the defendant is admitted to bail]."

RECOGNIZANCE—"BRIEFLY STATING NATURE OF OFFENSE." A recognizance, which gives the name of the offense for which the principal is held, sufficiently complies with the statutory provision of "briefly stating the nature of the offense." *State v. Birchim*, 9 Nev. 95; *State v. Murphy*, 23 Nev. 398.

RECOGNIZANCE NOT IN STATUTORY FORM STILL HOLDS OBLIGORS. *Id.*

Qualifications of Bail.

4470. SEC. 505. The qualifications of bail are as follows: First—Each of them must be a resident, and a householder or freeholder within the territory; but the court or magistrate may refuse to accept any person as a bail who is not a resident of the district where the bail is offered. Second—They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Justification of Bail.

4471. SEC. 506. The bail shall, in all cases, justify by affidavit, taken before

the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section five hundred and five.

Examination of Bail.

4472. SEC. 507. The court or magistrate may thereupon further examine the bail, upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper.

Indictment Before Conviction.

4473. SEC. 508. When the offense charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail, as prescribed in sections two hundred and sixty-two and two hundred and sixty-five.

Delivered Into Custody.

4474. SEC. 509. If the offense charged in this indictment be capital, the officer arresting the defendant shall deliver him into custody, according to the command of the bench warrant, as prescribed in section two hundred and sixty.

To Be Held by Sheriff.

4475. SEC. 510. When the defendant is so delivered into custody, he shall be held by the Sheriff, unless admitted to bail on examination, upon a writ of habeas corpus.

Bail, How Put In—Recognizance, Form Of.

4476. SEC. 511. The bail must be paid in by a written recognizance, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found, on the ____ day of _____ A. D. eighteen hundred and ____, in the court of the district of _____ (as the case may be), charging A. B. with the crime of [designating it generally], and he having been duly admitted to bail in the sum of _____ dollars, we, C. D. and E. F. [stating their place of residence], hereby undertake that the above named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and, if convicted, shall appear, for judgment and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the State of Nevada the sum of _____ dollars [inserting the sum in which the defendant is admitted to bail].

Qualifications of Bail.

4477. SEC. 512. The provisions contained in sections five hundred and five and five hundred and seven, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail, and incident thereto.

Bail on Appeal.

4478. SEC. 513. In the cases in which the defendant may be admitted to bail, upon an appeal, as provided in section five hundred, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus.

Notice of Application.

4479. SEC. 514. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the District Attorney of the county in which the verdict or judgment was originally rendered.

Recognizance.

4480. SEC. 515. The bail must possess the qualifications, and must be put

in in all respects as above provided, except that the condition of the recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

Deposit in Lieu of Bail.

4481. SEC. 516. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the Clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody.

In Exoneration of Bail.

4482. SEC. 517. If the defendant have given bail, he may, at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail shall be exonerated.

How Applied.

4483. SEC. 518. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the Clerk shall, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

Bail May Surrender.

4484. SEC. 519. At any time before the forfeiture of their recognizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

Detention of Defendant.

4485. SEC. 520. A certified copy of the recognizance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. Second—Upon a recognizance and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the District Attorney of the district, with a copy of the recognizance and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they shall be exonerated accordingly.

Bail May Arrest.

4486. SEC. 521. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, indorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

Return of Deposit on Surrender.

4487. SEC. 522. If money have been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate to the officer, showing the surrender, and upon a notice of five days to the District Attorney, with a copy of the certificate.

Recognizance Declared Forfeited, When.

4488. SEC. 523. If without sufficient excuse the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered upon its minutes, and the recognizance, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

Not Necessary to Call Defendant Before Forfeiture of Bail. *State v. Murphy*, 23 Nev. 401.

Discharge of Forfeiture.

4489. SEC. 524. If at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the recognizance or the deposit to be discharged upon such terms as may be just.

Action on Recognizance.

4490. SEC. 525. If the forfeiture be not discharged as provided in the last section, the District Attorney may, at any time after the adjournment of the court proceed by action only against the bail upon their recognizance.

Payment of Deposit.

4491. SEC. 526. If by reason of the neglect of the defendant to appear, as provided in section five hundred and twenty-three, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted as provided in section five hundred and twenty-four, the Clerk with whom it is deposited shall immediately after the final adjournment of the court pay over the money deposited to the County Treasurer.

Recommitted After Bail.

4492. SEC. 527. The court to which the committing magistrate shall return the depositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: First—When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section five hundred and twenty-three. Second—When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the state. Third—Upon an indictment being found in the cases provided in section two hundred and sixty-six.

Order of Recommitment.

4493. SEC. 528. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any Sheriff, Constable, Marshal, or policeman within this state, and committed to the custody of the Sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

Arrest on Such Order.

4494. SEC. 529. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

Commitment of Defendant.

4495. SEC. 530. If the order recite, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Amount of Bail Specified.

4496. SEC. 531. If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

Who May Take Bail.

4497. SEC. 532. When the defendant is admitted to bail, the bail may be

taken by any magistrate in the county having authority in a similar case to admit the bail upon the holding of the defendant to answer before indictment, as prescribed in section five hundred and three, or by any other magistrate to be designated by the court.

Form of Recognizance on Recommitment.

4498. SEC. 533. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form: "An order having been made on the ____ day of _____, A. D. 18__, by the court [naming it], that A. B. be admitted to bail in the sum of _____ dollars, in an action pending in that court against him, in behalf of the people of the State of Nevada, upon an [information, presentment, indictment or appeal, as the case may be], we, C. D. and E. F., of [stating their place of residence], hereby undertake that the above named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that [information, presentment, indictment, or appeal, as the case may be], and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the State of Nevada the sum of _____ dollars [inserting the sum in which the defendant is admitted to bail.]"

Qualifications of Bail.

4499. SEC. 534. The bail must possess the qualifications, and must be put in in all respects in the manner heretofore prescribed.

V—MISCELLANEOUS PROCEEDINGS.

1—Compelling Witnesses to Attend.

Subpena.

4500. SEC. 535. The process by which the attendance of a witness before a court or magistrate is required, is a subpena.

Who May Issue Subpenas.

4501. SEC. 536. A magistrate before whom an information is laid, or a District Judge before whom proceedings by indictment or information is being tried, may issue subpoenas subscribed by them for witnesses within the State of Nevada, either on behalf of the state or of the defendant; and when it is necessary to have a person imprisoned in the state prison brought before any district court, or a person imprisoned in the county jail brought before a district court sitting in another county, an order for that purpose may be made by the district court, or District Judge, at chambers, and executed by the Sheriff of the county when it is made; such order can only be made on motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. *As amended, Stats. 1881, 84.*

District Attorney May Issue.

4502. SEC. 537. The District Attorney may issue subpoenas, subscribed by him, for witnesses within the state, in support of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury, upon any investigation pending before them.

Subpenas for Witnesses.

4503. SEC. 538. The District Attorney may, in like manner, issue subpoenas subscribed by him, for witnesses within the state, in support of an indictment, to appear before the court at which it is to be tried.

Clerk to Issue Subpenas to Defendant.

4504. SEC. 539. The Clerk of the court at which an indictment is to be tried, shall at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as Clerk, for witnesses within the territory, as may be required by the defendant.

Form of Subpena.

4505. SEC. 540. A subpena authorized by the last four sections shall be substantially in the following form: The State of Nevada to A. B.: You are commanded to appear before C. D., a Justice of the Peace of ----- township, in ----- county (or, the court of -----, as the case may be), at [naming the place], on [stating the day and hour], as a witness in a criminal action, prosecuted by the State of Nevada against E. F. Given under my hand this ---- day of -----, A. D. 18--. G. H., Justice of the Peace (or J. B., District Attorney, or "By order of the court, L. M., Clerk," as the case may be).

Books and Papers Ordered Produced.

4506. SEC. 541. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpena: And you are required also to bring with you the following [describing intelligibly the books, papers, or documents required].

How Served.

4507. SEC. 542. A peace officer must serve within his county or district any subpena delivered to him for service, either on the part of the people or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay.

SERVICE OF SUBPENA NOT AUTHORIZED IN ANOTHER COUNTY UNLESS IN SAME JUDICIAL DISTRICT. *Washoe Co. v. Humboldt Co.*, 14 Nev. 123.

Service of Subpena.

4508. SEC. 543. The service of the subpena shall be by showing the original to the witness personally, and informing him of the contents.

Payment of Witnesses Out of County.

4509. SEC. 544. When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpena, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the District Judge, by an order subscribed by him, may direct the Treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

Payment of Witnesses.

4510. SEC. 545. Upon the production of the order, or a certified copy thereof, the County Treasurer shall pay the witness the sum specified therein, out of any fund in the county treasury not otherwise specially appropriated or set apart. It shall not be necessary for such order to be presented to the Board of County Commissioners or Auditor. *As amended, Stats. 1869, 61.*

Attendance Out of County.

4511. SEC. 546. No person shall be obliged to attend as a witness before any court or Judge out of the district where the witness resides, or is served with the subpena, unless a Judge of the court in which the offense is triable, or a Justice of the Supreme Court, upon an affidavit of the District Attorney, or prosecutor, or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpena an order for the attendance of the witness.

Disobedience.

4512. SEC. 547. Disobedience to a subpena, or a refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate as a contempt.

Forfeited.

4513. SEC. 548. Where a witness has entered into a recognizance to appear, as provided in section one hundred and sixty-seven, upon his failure so to do, his recognizance shall be forfeited, in the same manner as recognizances of bail.

Fine for Disobedience.

4514. SEC. 549. A witness disobeying a subpoena issued on the part of a defendant, shall also forfeit to the defendant the sum of one hundred dollars, which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

2—Testimony Taken by Commission.**Before or After Indictment.**

4515. SEC. 550. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment, have witnesses examined on his behalf, as prescribed in this Act, and not otherwise.

Commission.

4516. SEC. 551. When a material witness for the defendant is about to leave the state, or resides out of the state, or has departed from the state, and his or her place of abode is known, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission. *As amended, Stats. 1879, 64.*

Commission Directed.

4517. SEC. 552. A commission is a process issued under the seal of the court and the signature of the Clerk, directed to some person designated as Commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and return it according to the directions given in the commission.

Who Qualified to Be Commissioner.

4518. SEC. 553. The Commissioner shall be either a District Judge, County Clerk, or Notary Public of the district to which the commission is issued.

Applications for Commission.

4519. SEC. 554. The application must be made upon affidavit showing: First—The nature of the offense charged. Second—The state of the proceedings in the action. Third—The name of the witness, and that his or her testimony is material to the defense of the action. Fourth—That the witness is about to leave the state, or resides out of the state, or has departed from the state, naming his or her place of abode, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial. *As amended, Stats. 1879, 64.*

When Made.

4520. SEC. 555. The application may be made to the court during the term, or to the Judge in vacation, and must be upon three days' notice to the District Attorney.

When Granted.

4521. SEC. 556. If the court or Judge to whom the application is made be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

Stay of Proceedings.

4522. SEC. 557. If the application for a commission be granted, the court or Judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Notice.

4523. SEC. 558. When the commission is ordered, the defendant must serve upon the District Attorney, without delay, a copy of the interrogatories to be

annexed thereto, with two days' notice of the time at which they will be presented to the court or Judge.

Cross Interrogatories.

4524. SEC. 559. The District Attorney may, in like manner, serve upon the defendant, or his counsel, cross interrogatories, to be annexed to the commission with like notice.

Questions Inserted.

4525. SEC. 560. In the interrogatories, either party may insert any question pertinent to the issue.

Allowance of Questions.

4526. SEC. 561. When the interrogatories and cross interrogatories are presented to the court or Judge, according to the notice given, the court or Judge shall modify the questions so as to conform them to the rules of evidence, and shall indorse upon them his allowance, and annex them to the commission.

Direction to Execute Commission.

4527. SEC. 562. Unless the parties otherwise consent by an indorsement on the commission, the court or Judge shall indorse thereon a direction as to the manner in which it shall be returned, and may, in his discretion, direct that it be returned by mail, or otherwise, addressed to the Clerk of the court in which the action is pending.

Commission, How Executed.

4528. SEC. 563. The Commissioner, unless otherwise specially directed, may execute the commission as follows: First—He shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. Second—He shall cause the examination of the witness to be reduced to writing. Third—He shall write the answers of the witness as near as possible in the language he gives them, and shall read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth. Fourth—If the witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated. Fifth—If any papers or documents are produced before him, and proved by the witness, they shall be annexed to his deposition and be subscribed by the witness, and certified by the Commissioner. Sixth—The Commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commission, and must close up under seal, and address the same as directed on the commission. Seventh—If there be a direction on the commission to return it by mail, the Commissioner shall immediately deposit it in the nearest postoffice. If any other direction be made by the written consent of the parties, or by the court or Judge on the commission as to its return, he must comply with the direction.

What to Annex.

4529. SEC. 564. A copy of the last section must be annexed to the commission.

Return of Commission.

4530. SEC. 565. If the commission and return be delivered by the Commissioner to an agent, he must deliver the same to the Clerk to whom it is directed, or to the Judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hand of the Commissioner, and that it has not been opened or altered since he received it.

When Agent Unable to Deliver.

4531. SEC. 566. If the agent be dead, or from sickness or other casualty unable

personally to deliver the commission and return as prescribed in the last section, it may be received by the Clerk or Judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hand of the Commissioner.

Filing of Commission.

4532. SEC. 567. The Clerk or Judge receiving and opening the commission and return, must immediately file it with the affidavit mentioned in the last two sections, in the office of the Clerk of the court in which the indictment is pending.

By Return Mail.

4533. SEC. 568. If the commission and return be transmitted by mail, the Clerk to whom it is addressed must receive it from the postoffice, and open and file it in his office, where it shall remain, unless the court otherwise direct.

Open for Inspection.

4534. SEC. 569. The commission and return shall be at all times open to the inspection of the parties, who shall be furnished by the Clerk with copies of the same, or of such part thereof as they may require, on the payment of his fees.

Evidence for Either Party.

4535. SEC. 570. The depositions taken under the commission may be read in evidence by defendant on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in court.

§—Inquiry Into the Insanity of the Defendant Before Trial or After Conviction.

Insanity Excuses Crime.

4536. SEC. 571. An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment, or punished, for a public offense, while he is insane.

Inquiry as to Sanity.

4537. SEC. 572. When an indictment is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned as prescribed in section three hundred and thirty-four, to inquire into the fact.

Trial Suspended.

4538. SEC. 573. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

Insanity, How Tried.

4539. SEC. 574. The trial of the question of insanity shall proceed in the following order: First—The counsel for the defendant shall open the case and offer evidence in support of the allegation of insanity. Second—The counsel for the people shall open their case and offer evidence in support thereof. Third—The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. Fourth—When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury. Fifth—If the indictment be for an offense punishable

with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side. Sixth—The court shall then charge the jury, if requested by either party.

Charge to Jury.

4540. SEC. 575. The provisions of section three hundred and eighty-six, in respect to the charge of the court to the jury upon the trial of an indictment, shall apply to the trial of the question of insanity.

If Found Sane.

4541. SEC. 576. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

If Found Insane.

4542. SEC. 577. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane, and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the Sheriff, to the custody of some proper person, and that upon his becoming sane, he be redelivered by such person to the Sheriff.

Bail Exonerated.

4543. SEC. 578. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

Returning to Sanity.

4544. SEC. 579. If the defendant be received by the person so appointed he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the Sheriff and District Attorney of the county of that fact. The Sheriff shall thereupon, without delay, take the defendant from the custody of such person, and place him in proper custody, until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

Expense of Keeping Defendant.

4545. SEC. 580. The expenses of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall in the first instance be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city, or county, bound to provide for and maintain him elsewhere.

4—Dismissal of the Action, Before or After Indictment, for Want of Prosecution, or Otherwise.

Prosecution, When Dismissed.

4546. SEC. 581. When a person has been held to answer for a public offense, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

1. ORDER SUBMITTING CASE TO ANOTHER GRAND JURY—DISCRETION OF JUDGE. Where it appears that the court adjudicated upon the facts, the presumption arises that the facts were of such a character as to warrant the court in the exercise of its sound legal discretion to make the order. *Ex Parte Isbell*, 11 Nev. 595.

SECTIONS 281 AND 283 CONSTRUED. *Id.*

2. INDICTMENT FOR FELONY—Demurrer—Resubmission of Case to Four Grand Jurors. *Ex Parte Job*, 17 Nev. 184.

3. FAILURE TO INDICT AT NEXT TERM—Object of Statute. *State v. Lambert*, 9 Nev. 322.

Indictment, When Dismissed.

4547. SEC. 582. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term

of the court at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

1. **RIGHT TO SPEEDY TRIAL IN CRIMINAL CASE.** Every person held on a criminal charge has the legal right to demand a speedy and impartial trial by jury. *Ex Parte Stanley*, 4 Nev. 113.

SPEEDY TRIAL, WHAT. The speedy trial guaranteed every person accused of crime is a trial as soon as possible after indictment found, without depriving the prosecution of a reasonable time for preparation. *Id.*

2. **OBJECT OF SECTION 582 IS TO PREVENT ARBITRARY, WILLFUL AND OPPRESSIVE DELAYS.** It does not apply when circumstances beyond control of the court prevent speedy trial. *Ex Parte Larkin*, 11 Nev. 90.

Continuance of Action.

4548. SEC. 583. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own recognizance, or on the recognizance of bail, for his appearance to answer the charge at the time to which the action is continued.

Ex Parte Isbell, 11 Nev. 295.

Dismissal of Action.

4549. SEC. 584. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Reasons Set Forth.

4550. SEC. 585. The court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes.

Attorney-General and District Attorney.

4551. SEC. 586. Neither the Attorney-General nor the District Attorney shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section.

A Bar to Other Prosecution.

4552. SEC. 587. An order for the dismissal of the action, as provided in this Act, shall be a bar to another prosecution for the same offense, if it be a misdemeanor, but it shall not be a bar if the offense charged be a felony.

5—Entitling Affidavits.

Entitling Affidavits.

4553. SEC. 588. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, or appeal in which it is made.

6—Errors and Mistakes in Pleadings and Other Proceedings.

Errors in Pleading.

4554. SEC. 589. Neither a departure from the form or mode prescribed by this Act, in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

7—Disposal of Property Stolen or Embezzled.

Custody of Stolen Property.

4555. SEC. 590. When property, alleged to have been stolen or embezzled, shall come into the custody of a peace officer, he shall hold the same subject to

the order of the magistrate authorized by the next section to direct the disposal thereof.

Returned to Owner.

4556. SEC. 591. On satisfactory proof of the title of the owner of the property, the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

Stolen Property Returned.

4557. SEC. 592. If the property stolen or embezzled come into the custody of the magistrate, it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Court May Order Return.

4558. SEC. 593. If the property stolen or embezzled have not been delivered to the owner, the court before which a conviction is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

When Not Claimed.

4559. SEC. 594. If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the County Treasurer, by whom it shall be sold and the proceeds paid into the county treasury.

When Receipted For.

4560. SEC. 595. When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the Clerk of the court to which the deposition and statements must be sent, as provided by section one hundred and seventy-three.

8—Proceedings in Justices' Courts.

How Commenced.

4561. SEC. 596. All proceedings and actions before a justice's court, for a public offense, of which said courts have jurisdiction, shall be commenced by complaint setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint.

Justices' courts have jurisdiction of public offenses, Sec. 2531.

Complaint and Statement Thereon.

4562. SEC. 597. When a complaint, is laid before a Justice of the Peace, or a Judge of any other inferior tribunal having jurisdiction of criminal offenses, that an offense has been committed, of which a justice's court or other inferior tribunal has jurisdiction, the Justice or Judge to whom the complaint is made shall cause the person making the complaint, or some one else, to file with him a statement in writing, sworn to before him, or some other officer authorized by law to administer oaths, setting forth the offense charged, with such particulars as to time, place, person, and property as to enable the person charged to understand the character of the offense complained of, and to answer the complaint or charge. The statement may be similar in form to the provisions in respect to an indictment. *As amended, Stats. 1867, 127.*

Warrant of Arrest—Form.

4563. SEC. 598. If the Justice be satisfied therefrom that the offense complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form:

County of----- The State of Nevada to any Sheriff, Constable, Marshal, or policeman in this state: Complaint upon oath having been this day made before me [Justice of the Peace, Mayor, Police Judge, or Recorder, as the case may be], by C. D., that the offense of [designating it generally] has been committed, and accusing E. F. thereof, you are therefore commanded forthwith to arrest the above named E. F., and bring him before me forthwith, at [naming the place]. Witness my hand and seal, at-----, this---- day of-----, A. D. 18... A. B.

Pleadings of Defendant.

4564. SEC. 599. On being arrested, the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer, or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless, for good cause shown, an adjournment be granted. If an adjournment be granted, the defendant may be held to bail.

Present on Trial.

4565. SEC. 600. The defendant must be personally present in all cases before the trial shall proceed, unless he shall have given sufficient bail, as provided in this Act, or the District Attorney consent to proceed with the trial after the defendant shall have appeared in person, and shall also be represented by counsel. *As amended, Stats. 1867, 127.*

Docket.

4566. SEC. 601. A docket shall be kept by the Justice, or by the Clerk of the Court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein.

Jury Trial.

4567. SEC. 602. The defendant may waive a jury trial in person or by attorney, after having appeared in the action, but shall be entitled to a jury trial if demanded by him. The jury may be composed of any number of persons eligible to serve as jurors, not exceeding twelve, nor less than three; but only by consent of parties shall the number be less than twelve. The formation of juries is provided for by special statute. *As amended, Stats. 1867, 127.*

Challenge to Jurors.

4568. SEC. 603. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as may be taken on the trial of an indictment for a misdemeanor; but the challenge shall in all cases be tried by the court.

Oath to Jurors.

4569. SEC. 604. The court shall administer to the jury the following oath or affirmation: "You do swear (or affirm, as the case may be,) that you will well and truly try this issue between the State of Nevada and A. B., the defendant, and a true verdict give according to the evidence."

Proofs Delivered in Public.

4570. SEC. 605. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

Questions of Law.

4571. SEC. 606. The court shall decide all questions of law which may arise in the course of the trial, but shall give no charge with respect to matters of fact.

Deliberation of Jury.

4572. SEC. 607. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together, in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

Verdict.

4573. SEC. 608. The verdict of the jury shall, in all cases, be general.

Delivery of Verdict.

4574. SEC. 609. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall cause the same to be entered on the minutes.

Several Defendants.

4575. SEC. 610. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Jury Not Discharged.

4576. SEC. 611. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharge them.

Second Trial.

4577. SEC. 612. If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict be rendered.

Judgment.

4578. SEC. 613. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court shall render judgment thereon of fine and imprisonment, or both, as the case may require.

Imprisoned in Lieu of Fine.

4579. SEC. 614. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be paid or satisfied.

Acquittal—Malicious Prosecution.

4580. SEC. 615. When the defendant is acquitted, either by the court or by the jury, he shall be immediately discharged, and if the court certify in the minutes that the prosecution was malicious, or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

Judgment Against Prosecutor.

4581. SEC. 616. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

Entry of Verdict.

4582. SEC. 617. When a verdict is rendered it shall be immediately entered upon the minutes.

Rendered of Judgment.

4583. SEC. 618. After a plea or verdict of guilty, or after a verdict against

the defendant, on a plea of a former conviction or acquittal, the court shall appoint a time for rendering judgment, which shall not be more than two days and less than six hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail he shall be committed.

New Trial.

4584. SEC. 619. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.

When and for What Granted.

4585. SEC. 620. A new trial can be granted only in the following cases: First—If the trial has been had in his absence. Second—When the jury has received any evidence out of court. Third—When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth—When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth—When there has been error in the decision of the court, given on any question of law arising during the course of the trial. Sixth—When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

Arrest of Judgment.

4586. SEC. 621. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Judgment Pronounced.

4587. SEC. 622. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the court.

Discharge.

4588. SEC. 623. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Execution of Imprisonment.

4589. SEC. 624. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the Sheriff, Marshal, or other officer, which shall be a sufficient warrant for the execution of the same.

Imprisonment Until Fine Paid.

4590. SEC. 625. When a judgment is entered imposing a fine and ordering the defendant to be imprisoned until the fine be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid, and execution may issue for the collection of said judgment, the same as in civil cases. *As amended, Stats. 1881, 58.*

Application of Fine.

4591. SEC. 626. Upon the payment of the fine the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the County or City Treasurer, according as the offense is prosecuted in a justice's court.

Before Commitment.

4592. SEC. 627. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section.

Forfeiture of Deposit.

4593. SEC. 628. If a defendant be discharged on bail, or has deposited money

instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the district court.

Failure to Appear.

4594. SEC. 629. In case of failure to appear for judgment, the court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears, or is brought before it.

VII—SPECIAL PROCEEDINGS.

1—Search Warrant.

Defined.

4595. SEC. 630. A search warrant is an order in writing in the name of the State of Nevada, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, or implements used, or evidences of crime, and bring it before the magistrate.

When Issued.

4596. SEC. 631. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Issued on Probable Cause.

4597. SEC. 632. No search warrant shall be issued but upon probable cause, supported by affidavit naming or describing the person, and particularly describing the property and place to be searched.

Complainant Examined.

4598. SEC. 633. The magistrate must before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions.

4599. SEC. 634. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Search Warrant to Issue, When.

4600. SEC. 635. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

Form of Search Warrant.

4601. SEC. 636. The warrant shall be in substantially the following form:
County of _____. The People of the State of Nevada, to any Sheriff, Constable, Marshal, or policeman in the county of _____. Proof by affidavit having been this day made before me by [naming every person whose affidavit has been taken] that [stating the grounds of the application according to section six hundred and thirty-two, or if the affidavit be not positive that there is probable cause for believing that, stating the ground of the application in the same manner]; you are thereupon commanded in the daytime (or at any time of the day or night, as the case may be, according to section six hundred and forty), to make immediate search on the person of C. D. (or in the house situated _____ describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property [describing it with reasonable particularity], and if you find the same, or any part thereof, to bring it forthwith before me at [stating the place]. Given under my hand, and dated this ____ day of _____, A. D. 18__ E. F., Justice of the Peace (or as the case may be).

How Served.

4602. SEC. 637. A search warrant may, in all cases, be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it, he being present and acting in its execution.

Officer May Break Door.

4603. SEC. 638. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

May Break Door or Window.

4604. SEC. 639. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation.

Search Warrant to Be Served in Daytime—Proviso.

4605. SEC. 640. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Executed and Returned.

4606. SEC. 641. A search warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void.

Receipted For.

4607. SEC. 642. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he shall leave it in the place where he found the property.

How Disposed Of.

4608. SEC. 643. When the property is delivered to the magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections five hundred and ninety-one to five hundred and ninety-five, both inclusive.

Inventory and Oath of Officer.

4609. SEC. 644. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time to the following effect: "I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Who Entitled to Inventory.

4610. SEC. 645. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Testimony.

4611. SEC. 646. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto.

Testimony in Writing.

4612. SEC. 647. The testimony given by each witness must be reduced to writing, and certified by the magistrate.

Property Restored.

4613. SEC. 648. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

Returned, When.

4614. SEC. 649. The magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the court having power to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

Search Warrant Maliciously Procured.

4615. SEC. 650. Whoever shall maliciously, and without probable cause, procure a search warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five thousand dollars, or imprisonment not exceeding six months.

Officer Exceeding Authority.

4616. SEC. 651. A peace officer who, in executing a search warrant, shall willfully exceed his authority, or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor, and punished as in the next preceding section is provided.

Person May Be Searched.

4617. SEC. 652. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or the order of the court in which the defendant may be tried.

2—Proceedings Against Fugitives from Justice.

Fugitive Delivered Up.

4618. SEC. 653. A person charged, in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this state, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up by the Governor of this territory, to be removed to the state or territory having jurisdiction of the crime.

How Apprehended.

4619. SEC. 654. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found in this state.

Arrest and Commitment.

4620. SEC. 655. The proceedings for the arrest and commitment of the person charged shall be in all respects similar to those provided in this Act for the arrest and commitment of a person charged with a public offense committed within this state, except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

When Committed.

4621. SEC. 656. If, from the examination, it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state or territory in

which he committed the offense, unless he give bail as provided in the next section, or until he be legally discharged.

Admitted to Bail, When.

4622. SEC. 657. The magistrate may admit the person arrested to bail by recognizance with sufficient sureties, and in such sums as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the Governor of this state.

Notice to District Attorney.

4623. SEC. 658. Immediately upon the arrest of the person charged, the magistrate shall give notice to the District Attorney of the district of the name of the person and the cause of the arrest.

District Attorney to Give Notice.

4624. SEC. 659. The District Attorney shall immediately thereafter give notice to the executive authority of the state or territory, or to the Prosecuting Attorney, or presiding Judge of the criminal court of the city or county, within the state or territory having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

When Discharged.

4625. SEC. 660. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the Governor of this state.

Return of Proceedings.

4626. SEC. 661. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself within a time to be specified in the recognizance.

3—Compromising Offenses.

What Offenses May Be Compromised.

4627. SEC. 662. When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed: First—By or upon an officer of justice, while in the execution of the duties of his office. Second—Riotously. Third—With intent to commit a felony.

Manner of Compromise.

4628. SEC. 663. If the party injured appear before the court to which the depositions are required to be returned, at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but, in such case, the reasons for the order must be set forth therein, and entered on the minutes.

Order a Bar.

4629. SEC. 664. The order authorized by the last section shall be a bar to another prosecution for the same offense.

No Compromise.

4630. SEC. 665. No public offense shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this Act.

*4—Fines and Forfeitures.***Payment of Costs.**

4631. SEC. 666. All fines and forfeitures collected in any court of this state shall be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred, and after such costs are paid, the residue shall be paid to the County Treasurer of the county in which the court is held.

Penalty for Neglect or Refusal to Pay Over.

4632. SEC. 667. If any Clerk, Justice of the Peace, Sheriff, Constable, or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent damages and interest, to be recovered in like manner as for failing to pay over money received on execution, and shall be deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

VIII—PROMISCUOUS PROVISIONS.

Oath or Affirmation.

4633. SEC. 668. The term "oath," when used in this Act, shall be deemed to include an affirmation.

Signature or Mark.

4634. SEC. 669. When a signature of a person is required by this Act, the mark of a person, if he cannot write, shall be deemed sufficient, the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

Transfer of Prisoners.

4635. SEC. 670. When it is necessary for any purpose to have a person who is in prison in any part of the state, brought before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the Sheriff of the county where it is made.

Process.

4636. SEC. 671. Process issued by a court or magistrate shall be executed according to its terms.

Magistrate.

4637. SEC. 672. The term "magistrate," when used in this Act, signifies any one of the officers mentioned in section one hundred and two.

Peace Officers.

4638. SEC. 673. The term "peace officer," when used in this Act, signifies any one of the officers mentioned in section one hundred and nine.

Fees Allowed Recovered as Costs.

4639. SEC. 674. The fees allowed to Justices of the Peace, and other officers having the jurisdiction and authority of Justices of the Peace, Clerks, peace officers, and District Attorneys, shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

Quinn v. District Court, 16 Nev. 76.

Removed Before Trial.

4640. SEC. 675. In every case where a criminal action may have been or shall be removed before trial, the cost accruing upon such removal and trial shall be a charge against the county in which the cause of indictment occurred.

County of Washoe v. County of Humboldt, 14 Nev. 123.

To Certify Account to Auditor.

4641. SEC. 676. The Clerk of the county to which such action is or may be

removed, shall certify the amount of said costs to the Auditor of his county, which shall be examined, allowed and paid as other county charges.

Superseding of Criminal Statute.

4642. SEC. 677. That the superseding of any law creating a criminal offense, shall not be held to constitute a bar to the indictment and punishment of a crime already committed, or to bar the trial and punishment of a crime where an indictment has been already found, in violation of the law so superseded, unless the intention to bar such indictment and punishment, or trial and punishment where an indictment has been already found, is expressly declared in the superseding Act.

An Act to amend an Act entitled "An Act to regulate proceedings in criminal cases in the courts of justice in the State of Nevada, and making further provisions relating thereto."

Approved March 13, 1867, 124.

SECTIONS 1 to 12 being amendatory of certain sections in the general Act regulating proceedings in criminal cases, they are inserted in the place of the original sections.

When Case Involves Title to Real Property.

4643. SEC. 13. In a criminal action brought in a justice's court, or other court or tribunals of inferior jurisdiction, when the offense charged involves an injury to real estate property, and it shall be made satisfactorily to appear to the Justice or Judge of the court in which the action is pending, or at any time before or during the trial, that the action cannot be tried without deciding a question of title to real property, or of the right to the possession thereof, all further proceedings in the action shall be suspended, and the same, together with all the papers and a transcript showing the proceedings had, shall forthwith be transferred to the district court of the county for the trial and judgment. The defendant may be committed for trial in the court to which the action is transferred, or admitted to bail, as in other cases. The action, when transferred, shall be tried and prosecuted to judgment in the district court, as if originally commenced therein.

Murphy v. Rising, 10 Nev. 97.

Appeal to District Court—Trial in Appellate Court.

4644. SEC. 14. The defendant may appeal to the district court of the county from any judgment rendered in a criminal action in a justice's court or other inferior tribunal. The appeal may be taken at any time after judgment, by complying with the provisions of this section. The party intending to appeal must file with the Judge of the court wherein the action was tried, and serve upon the District Attorney a notice entitled in the action, setting forth the character of the judgment, and the intention of the party to appeal therefrom to the district court. The notice must be served and filed within five days after the rendition of the judgment and entry thereof, in the docket of the court trying the action. He may also, at any time thereafter, if he desire to be released from custody during the pendency of the appeal, or desire a stay of proceedings under the judgment until the appeal be disposed of, enter bail for the due prosecution of the appeal, the payment of any judgment, fine, and costs that may be awarded against him on the appeal, and for failure to prosecute the same, and for the rendering of himself in execution of the judgment appealed from, or of any judgment rendered against him in the action appealed from in the court to which the same is appealed. The action in the appellate or district court shall be tried *de novo*.

An Act in relation to fines and to repeal an Act relating thereto.

Approved March 5, 1887, 122.

Paid Into State Treasury.

4645. SECTION 1. The full amount of all fines imposed and collected under

and for a violation of any penal law of this state shall be paid into the state treasury, and costs shall in no case be deducted from the fine fixed by law or imposed by the court, but shall be taxed against the defendant in addition to the fine and separately stated on the docket of the court.

One Day Imprisonment for Each Two Dollars.

4646. SEC. 2. If the fine be not paid the court may order the defendant to be imprisoned one day for each two dollars of the fine not paid.

Costs.

4647. SEC. 3. Judgment for cost shall be entered against the defendant, to be collected as judgments in civil cases.

Repeal.

SEC. 4. An Act in relation to fines, approved January twenty-eighth, one thousand eight hundred and sixty-seven [p. 44], is hereby repealed.

An Act to define the term "reasonable doubt."

Approved February 1, 1889, 27.

Defining Reasonable Doubt.

4648. SECTION 1. A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual and substantial, not mere possibility or speculation.

No Other Definition to Be Given.

4649. SEC. 2. No other definition of reasonable doubt shall be given by the court to juries in criminal actions in this state.

1. **REASONABLE DOUBT—STATUTORY DEFINITION SHOULD ALONE BE GIVEN.** *Held*, that the statutory definition of "reasonable doubt" is well expressed and that Judges should follow the exact language of the statute, and not attempt any further explanation. *State v. Potts*, 20 Nev. 389; *State v. Streeter*, 20 Nev. 403.
2. **REASONABLE DOUBT—Definitions and Examples.** *State v. Raymond*, 11 Nev. 98; *State v. Rover*, 11 Nev. 343; *State v. Jones*, 19 Nev. 365; *State v. McLane*, 15 Nev. 345; *State v. Davis*, 14 Nev. 439; *State v. O'Connor*, 11 Nev. 425; *State v. Hamilton*, 13 Nev. 396; *State v. Millain*, 3 Nev. 409; *State v. Nelson*, 11 Nev. 340.

An Act to regulate proceedings in certain criminal cases.

Approved February 27, 1885, 44.

Neat Cattle, Offense Concerning.

4650. SECTION 1. When a public offense concerns any neat cattle, horse, mule or other animal running at large upon any range which extends into more than one county of this state, such offense may be prosecuted in either of said counties, and upon the trial of any such offense, proof that such animal is the property of the owner, or person occupying the said range, and was at the time the offense was committed running at large upon the range, shall be prima facie evidence that said offense was committed within the jurisdiction of the court.

Brand Prima Facie Evidence of Ownership.

4651. SEC. 2. Upon the trial of any public offense which concerns any neat cattle, horse, mule, or other animal running at large upon any range in this state, the brand and other marks upon such animal shall be prima facie evidence of ownership.

An Act supplementary to an Act entitled "An Act to regulate proceedings in criminal cases in the courts of justice in the Territory of Nevada," approved November 26, 1861.

Approved February 17, 1893, 24.

Indictment in Certain Cases.

4652. SECTION 1. In every complaint or indictment for obtaining or attempting to obtain any chose in action, money, goods, wares, chattels, effects or other valuable thing, by false representations or by causing or procuring others to report falsely of his wealth or mercantile character, or by any false pretense whatsoever, it shall be a sufficient description of the offense to charge that the accused did, at a certain time and place, unlawfully obtain, or attempt to obtain, as the case may be, from A. B. his money or property, describing it generally, where it can be done, by means and by use of a cheat, or fraud, or trick, or deception, or false representation, or false pretense, or confidence game, or false and bogus check, or instrument, or coin, or metal, as the case may be, with intent to cheat and defraud the said A. B.

An Act to enable a defendant to testify as a witness in criminal prosecutions.

Became a law February 18, 1867, 58.

Defendant May Testify in Own Behalf.

4653. SECTION 1. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; the credit to be given to his testimony being left solely to the jury, under the instructions of the court.

Defendant Not Compelled, etc.

4654. SEC. 2. Nothing herein contained shall be construed as compelling any such person to testify; and in all cases wherein the defendant to a criminal action declines to testify, the court shall specially instruct the jury that no inference of guilt is to be drawn against him for that cause.

1. **PROSECUTION CANNOT MAKE ACCUSED ITS OWN WITNESS.** Though an accused person may become a witness in his own behalf and thereby subject himself to cross-examination, the prosecution cannot make him, against his consent, its own witness. *State v. Cohn*, 9 Nev. 179.
2. **CROSS-EXAMINATION OF DEFENDANT.** When a defendant in a criminal case offers himself as a witness in his own behalf he subjects himself to the same cross-examination that would be proper in the case of any other witness. *State v. Huff*, 11 Nev. 17; *State v. Cohn*, 9 Nev. 179.
3. **TESTIMONY OF DEFENDANT—COMMENTS OF COUNSEL.** If the defendant in a criminal case voluntarily testifies in his own behalf, the same rights exist in favor of the District Attorney to comment upon his testimony, or his refusal to answer any proper question, or to draw all proper inference from his failure to testify upon any material matter within his knowledge, as with other witnesses. *State v. Harrington*, 12 Nev. 125.
4. **CREDIBILITY OF DEFENDANT'S TESTIMONY—INSTRUCTIONS.** The credibility of defendant's testimony in his own behalf, is to be determined in the same manner as that of any other witness. The Judge should not state to the jury his estimate of a witness, or give his opinion as to the weight to be attached to his testimony. *State v. Johnson*, 16 Nev. 36; *State v. Stewart*, 9 Nev. 120; *State v. Vasquez*, 16 Nev. 42.
5. **CREDIBILITY OF DEFENDANT'S TESTIMONY.** Where a defendant in a criminal case offers himself as a witness in his own behalf, the jury should give to his testimony all the credit to which it is entitled. In ascertaining the extent of its credibility, it is proper and necessary for the jury to consider the situation in which the defendant is placed. *State v. Slingerland*, 19 Nev. 135; *State v. Streeter*, 20 Nev. 403; *State v. Hartley*, 22 Nev. 345; *State v. Maynard*, 19 Nev. 284.

An Act extending the criminal laws of this state to and over the Indians therein.

Approved February 20, 1885, 34.

Indians Amenable to Criminal Law.

4655. SECTION 1. All the laws of this state concerning crimes and punishments, or applicable thereto, and all the laws of this state concerning proceedings in criminal cases or applicable thereto, are hereby extended to and over all Indians in this state, whether such Indians be on or off an Indian reservation, and all of said laws are hereby declared to be applicable to all crimes committed by Indians within this state, whether committed on or off an Indian reservation, save and except an offense committed upon an Indian reservation by one Indian against the person or property of another Indian.

CRIMES AND PUNISHMENTS.

An Act concerning crimes and punishments.

Approved November 26, 1861, 56.

I—PERSONS CAPABLE OF COMMITTING CRIMES.

Essence of Crime.

4656. SECTION 1. In every crime or public offense, there must be a union or joint operation of act and intention, or criminal negligence.

1. CRIMINAL INTENT, HOW DETERMINED. *State v. Trolson*, 21 Nev. 419.
2. CRIMINAL INTENT NECESSARY TO CONSTITUTE CRIME. The essence of a criminal offense is the wrongful intent, without which it cannot exist. *State v. Gardner*, 5 Nev. 377.
3. INTENT, WHEN ELEMENT OF CRIME. Where a specific intent is required by statute to constitute the crime, such specific intent enters into the nature of the act itself, and must be alleged and proved beyond a reasonable doubt. *State v. Zichfeld*, 23 Nev. 304.
- WHEN INTENT NOT ELEMENT OF CRIME. When the statute forbids the doing of a certain thing, and is silent concerning the intent with which it is done, a person who does the forbidden act is not guiltless because he has no wrongful intent beyond that which is involved in the doing of the prohibited act. (*State v. Gardner*, 5 Nev. 377, overruled.) *Id.*
4. INSTRUCTION. When innocent act becomes criminal, intent must be proved, but when the act is in itself unlawful, the justification or excuse lies on defendant. *State v. Marks*, 15 Nev. 33.
5. INTENT TO KILL—WHEN ESSENTIAL TO CONSTITUTE MURDER. An intent to take life is an essential element in the constitution of murder in the first degree, except where it is committed in the perpetration or attempt to perpetrate arson, rape, robbery, or burglary. *State v. Newton*, 4 Nev. 410.
6. BURGLARY—INTENT. In order to constitute the crime of burglary, it is just as essential to prove the intent as it is to prove the entry. *State v. Cowell*, 12 Nev. 337.

Intent.

4657. SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Of Sound Mind.

4658. SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil.

Infant Incapable.

4659. SEC. 4. An infant under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown.

Wrong Counsel.

4660. SEC. 5. Any person counseling, advising, or encouraging an infant under the age of ten years, a lunatic, or idiot, to commit any offense, shall be prosecuted for such offense, where committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising, or encouraging, as aforesaid, had he or she committed the offense directly, without the intervention of such idiot, lunatic, or infant.

Married Women Under Coercion.

4661. SEC. 6. A married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime not punishable with death; *provided*, it appear, from all the facts and circumstances of the case, that violent threats, command, or coercion were used; and, in such case, the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness.

4662. SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance, or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she, or they had been possessed of sound reason and discretion.

Misfortune or Accident.

4663. SEC. 8. All acts committed by misfortune or accident shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention or culpable negligence.

Committed Under Duress.

4664. SEC. 9. A person committing a crime not punishable with death, under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty, and such threats or menaces being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

II—ACCESSORY.**Definition.**

4665. SEC. 10. An accessory is he or she who stands by and aids, abets, or assists; or who, not being present, aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises, or encourages, shall be deemed and considered as principal, and punished accordingly.

1. **ACCESSORY BEFORE THE FACT SAME AS PRINCIPAL**—Robbery by Absent Person—Doctrine of Agency as to Accessories Before the Fact—Indictment. *State v. Chapman*, 6 Nev. 320.
2. **PRINCIPAL OR ACCESSORY BEFORE THE FACT**—What Held to Be. *State v. Laurie*, 13 Nev. 386.

CONFEDERATES ARE PRINCIPALS. Where several confederates act in pursuance of a common plan, in the commission of an offense, all are held to be present where the offense is committed, and all are principals. *Id.*

3. **TRIAL OF ACCESSORY BEFORE THE FACT**—Charge as to Principal—Proof of Guilt of Principal Not Necessary. *State v. Jones*, 7 Nev. 408.

4. **ACCESSORY BEFORE THE FACT**—Robbery—Evidence Necessary to Show Guilt. *State v. O'Keefe*, 23 Nev. 127.

Accessory After the Fact.

4666. SEC. 11. An accessory after the fact, is a person who, after full knowl-

edge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined a sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and enormity of the crime.

III—WITNESSES.

Competency Of.

4667. SEC. 12. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided for in this Act. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases when two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness against another, in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution; and any person may be compelled to testify, as provided in this section. *As amended, Stats. 1881, 83.*

Husband and Wife.

4668. SEC. 13. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties. *As amended, Stats. 1865, 403; 1881, 84.*

Affirmation Sufficient.

4669. SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit willful and corrupt perjury.

IV—OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

Murder.

4670. SEC. 15. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Express Malice.

4671. SEC. 16. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

EXPRESS MALICE—MURDER IN THE FIRST DEGREE. Under the statute of this state, express malice necessarily renders any murder, murder of the first degree. *State v. Lopez, 15 Nev. 408.*

Degree of Murder—Punishment.

4672. SEC. 17. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but, if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death, and every person

convicted of murder of the second degree shall suffer imprisonment in the state prison for a term not less than ten years, and which may be extended to life.

LENGTH OF TIME FOR DELIBERATION is not an essential ingredient in murder in the first degree. It is sufficient if the design to murder was formed before the striking of the fatal blow. *State v. Millain*, 3 Nev. 410.

Manslaughter.

4673. SEC. 18. Manslaughter is the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or, involuntary, in the commissions of an unlawful act, or a lawful act without due caution or circumspection.

Voluntary Manslaughter.

4674. SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

When Punished as Murder.

4675. SEC. 20. The killing must be the result of that sudden, violent impulse of passion supposed to be irresistible; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

Involuntary Manslaughter.

4676. SEC. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner; *provided*, that where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

Punishment.

4677. SEC. 22. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the state prison for a term not exceeding ten years.

Death Within a Year and a Day.

4678. SEC. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Place of Trial.

4679. SEC. 24. If the injury be inflicted in one county, and the party die within another county, or without the state, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county, and the party killed in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Justifiable Homicide.

4680. SEC. 25. Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another, for the pur-

pose of assaulting or offering personal violence to any person dwelling or being therein.

What Necessary for Defense.

4681. SEC. 26. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

Killing in Self-Defense.

4682. SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

SEC. 28, concerning official duty, is superseded, Sec. 1862.

Justifiable Homicide—Officer.

4683. SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Excusable, by Misadventure.

4684. SEC. 30. Excusable homicide by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an ax, and the head flies off and kills a bystander, or where a parent is moderately correcting his child, or a master his servant, or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

Excusable Otherwise.

4685. SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

Appearing Justifiable.

4686. SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Mitigating Circumstances.

4687. SEC. 33. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified, or excused in committing the homicide.

Concealing Death of Bastard.

4688. SEC. 34. If any woman shall endeavor privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the state prison for a term not exceed-

ing one year; *provided, however*, that nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Duelling.

4689. SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shotgun, pistol, bowie knife, dirk, smallsword, backsword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly.

Disfranchised, When.

4690. SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison not less than two nor more than ten years, and shall be incapable of voting or holding any office of trust or profit under the laws of this state.

Competent Witness.

4691. SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon, or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this Act, and may be compelled to appear and give evidence before any Justice of the Peace, grand jury, or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

Posting for Not Fighting.

4692. SEC. 38. If any person shall post another, or, in writing, or print, or orally shall use any reproachful or contemptuous language to, or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be imprisoned in the state prison for a term not less than six months nor more than one year, and fined in any sum not less than five hundred nor exceeding one thousand dollars.

Penalty for Duelling—Acting as Second—Deemed Manslaughter.

4693. SEC. 39. If any person or persons, with or without deadly weapons, upon previous concert and agreement, fight one with the other, or give or send, or authorize any other person to give or send, a challenge, verbally or in writing, to fight any other person, the person or persons giving, sending, or accepting a challenge to fight any other person, with or without weapons, upon conviction thereof shall be punished by imprisonment in the state prison not less than two years, or more than five years; and every person who shall act for another in giving, sending, or accepting, either verbally or in writing, a challenge, to fight any other person, upon conviction thereof they, or either, or any of them, shall be punished by imprisonment in the state prison not less than two years or more than five years. Should death ensue to any person in such fight, or should any person die from any injuries received in such fight within one year and one day, the person or persons causing, or having any agency in causing such death, either by fighting or by giving or sending for himself, or for any other person, or in receiving for himself, or for any other person, such challenge to fight, shall be deemed guilty of manslaughter, and punished accordingly. *As amended, Stats. 1877, 75.*

Drawing Deadly Weapons—Duties of Officers.

4694. SEC. 40. Any person in this state having, carrying, or procuring from

another person any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude, angry, or threatening manner, not in necessary self-defense, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or persons so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months; *provided, nevertheless*, that no Sheriff, Deputy Sheriff, Marshal, Constable, or other peace officer, shall be held to answer, under the provisions of this Act, for drawing or exhibiting any of the weapons herein-before mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil, and peace officers in this state to be vigilant in carrying the provisions of this Act into full force and effect. *As amended, Stats. 1873, 118.*

Assault and Intimidation.

4695. SEC. 41. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time, in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the state prison not less than one or more than ten years.

Administering Poison—Abortion.

4696. SEC. 42. Every person who shall willfully and maliciously administer, or cause to be administered to or taken by any person, any poison, or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than ten years, and which may extend to life. And any person who shall sell, furnish, procure, prescribe, take, administer, or who shall cause to be sold, furnished, procured, prescribed, taken, or administered, any medicinal substance, or other substance, or liquid, with the intention to procure or cause the miscarriage of any woman, then being pregnant, or with child, or shall use, or caused to be used, any instrument or instruments whatever, with the intention aforesaid, or who shall in any manner make known to any person or persons the ingredients of any medicinal substance or substances, or other substances, or liquid, with the like intent, and shall be thereof duly convicted, shall be punished by imprisonment in the state prison for a period not less than one nor more than ten years; *provided*, that no physician shall be affected by the last clause of this section who, in the discharge of his professional duty, produces the miscarriage of any woman in order to save her life. *As amended, Stats. 1869, 64.*

Mayhem.

4697. SEC. 43. Mayhem consists of unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily, or of purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the state prison for a term not exceeding fourteen years.

Rape.

4698. SEC. 44. Rape is the carnal knowledge of a female forcibly and against her will, and a person duly convicted thereof shall be punished by imprisonment in the state prison for a term not less than five years, and which may extend to life; and any person of the age of fifteen years and upwards who shall have carnal knowledge of any female child under the age of fourteen years, either with or

without her consent, shall be adjudged guilty of the crime of rape, and be punished as before provided. *As amended, Stats. 1889, 74.*

1. **ATTEMPT TO COMMIT RAPE—CONSENT OF FEMALE.** An attempt to commit rape does not constitute an assault when the female actually consents to what is done, whether she be within the age of twelve years or not. *State v. Pickett, 11 Nev. 255.*
2. **RAPE—PENETRATION.** Slightest proof only necessary to justify submitting question to the jury. *State v. Depoister, 21 Nev. 107.*
3. **CRIMINAL LAW—RAPE—CONSTRUCTIVE FORCE.** In the crime of rape, the force necessary to complete the offense may be constructive. Such constructive force exists where sexual intercourse is had with a woman who is unconscious or mentally unable to fairly comprehend the nature and consequences of the sexual act. *State v. Lung, 21 Nev. 200.*

Crime Against Nature.

4699. SEC. 45. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the state prison for a term not less than five years, and which may extend to life.

Assault.

4700. SEC. 46. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another, and every person convicted thereof shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months. *As amended, Stats. 1873, 118.*

Assault With Intent.

4701. SEC. 47. An assault with intent to kill, commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the state prison for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the state prison not less than one year, or exceeding two years, or to a fine not less than one thousand nor exceeding five thousand dollars, or to both such fine and imprisonment. *As amended, Stats. 1873, 118.*

1. **ASSAULT WITH DEADLY WEAPON.** To constitute the crime of assault with a deadly weapon with intent to inflict a bodily injury, there must be an unlawful attempt with a weapon, deadly either in its nature or capable of being used in a deadly manner, to inflict a bodily injury, and with the present ability so to do. *State v. Napper, 6 Nev. 113.*
2. **FINE FOR ASSAULT WITH DEADLY WEAPON.** Cannot be less than one thousand dollars. *State v. Lawry, 4 Nev. 161. 91 Pac R 137*

Assault and Battery.

4702. SEC. 48. Assault and battery is the unlawful beating of another, and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail for a term not exceeding six months. *As amended, Stats. 1873, 118.*

False Imprisonment.

4703. SEC. 49. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the state prison for a term not exceeding one year.

Kidnaping, What Is.

4704. SEC. 50. Kidnaping is the forcible abduction or stealing away of a man, woman, or child from his or her own home, and sending and taking him or her into another country.

Punishment Of.

4705. SEC. 51. Every person who shall forcibly steal, take, or arrest any man,

woman, or child, whether white, black, or colored, or any Indian in this state, and carry him or her into another county, state, or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this state, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnaping, and be punished by imprisonment in the state prison for any term not less than one, nor more than ten years, for each person kidnaped, or attempted to be kidnaped.

Kidnaping to Enslave.

4706. SEC. 52. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, colored person, or Indian, into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnaping, and, upon conviction thereof, shall be punished as in the next preceding section specified.

Forcing Woman to Marry.

4707. SEC. 53. Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the state prison for a term not less than two nor more than fourteen years; and the record of such conviction shall operate as a divorce to the party so married.

Abduction of Children—Poisoning Water.

4708. SEC. 54. Every person who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy, or entice away any child under the age of ten years, with intent to detain and conceal such child from its parents, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the state prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both such fine and imprisonment. Every person who shall willfully poison any spring, well or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than ten years.

Extortion by Threats.

4709. SEC. 55. If, any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be punished, upon conviction thereof, by imprisonment, not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

Arson, First Degree.

4710. SEC. 56. Every person who shall willfully and maliciously burn, or cause to be burned, in the night-time, any dwelling house in which there shall be at the time some human being, shall be deemed guilty of arson in the first degree, and, upon conviction thereof, shall be punished by imprisonment not less than two years, and which may extend to life, in the state prison.

Second Degree—When Guilty of Murder.

4711. SEC. 57. Every person who shall willfully and maliciously burn, or cause to be burned, any dwelling house or building owned by himself, or the prop-

erty of another, in the daytime, or in the night or daytime willfully burn, or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, or stacks or stocks of grain, or stacks or stocks of hay or straw, or cordwood, or lumber, or charcoal of the value of fifty dollars or more, or standing crops, the property of any other person or corporation, or any church, meeting house, school house, state house, court house, or other public building, or any ship, vessel, boat, or other water craft, or any bridge of the value of fifty dollars or more, erected across any of the waters of this state, such person so offending shall be deemed guilty of arson in the second degree, and, upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than ten years; and should the life or lives of any person or persons be lost in consequence of such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly. *As amended, Stats. 1877, 75.*

1. ARSON—Overinsurance as Evidence. *State v. Cohn, 9 Nev. 179.*

2. INDICTMENT FOR ARSON—Evidence. *State v. McMahon, 17 Nev. 365.*

To Defraud Insurer.

4712. SEC. 58. Every person who shall willfully burn, or cause to be burned, any building, or any goods, wares, merchandise, or other chattel, which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the property of such person, or of any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

Burglary.

4713. SEC. 59. Every person who shall, in the night-time, forcibly break and enter, or, without force (the doors or windows being open), enter into any dwelling house, or tent, or any other house or building whatever, or any vessel, water craft, railroad, passenger, or freight car, with intent to commit murder, robbery, rape, mayhem, grand larceny, petit larceny, or any felony, shall be deemed guilty of burglary, and, on conviction thereof shall be punished by imprisonment in the state prison for a term not less than one nor more than ten years. Whenever such burglary is committed upon a railroad train, in motion or in rest, in this state, and it cannot with reasonable certainty be ascertained in what county said crime was committed, the offender may be arrested and tried in any county through which said railroad train may have run. Every person who, in the daytime, shall enter any dwelling house, shop, warehouse, depot, store, mill, barn, stable, outhouse, other building, vessel, or railroad, passenger, or freight car, with intent to steal, or to commit any felony whatever therein, is guilty of housebreaking, and, on conviction, shall be punished by imprisonment in the state prison for not less than one nor more than five years. Night-time, as in this section named, means the period between sunset and sunrise. If housebreaking be committed upon any railroad train, in motion or in rest, in this state, and it cannot with reasonable certainty be ascertained in what county said crime was committed, the offender may be arrested and tried in any county through which said railroad train may have run. *As amended, Stats. 1873, 144.*

1. ABOVE SECTION CONSTRUED. But one species of burglary. *State v. Watkins, 11 Nev. 30.*

2. INTENT AS WELL AS ENTRY MUST BE PROVED. *State v. Cowell, 12 Nev. 337; State v. Ryan 12 Nev. 401.*

3. INHABITANCY OF BUILDING NOT MATERIAL TO CONSTITUTE BURGLARY—Statute Construed. *State v. Dan, 18 Nev. 345.*

OFFENSES AGAINST PROPERTY.

Robbery Defined.

4714. SEC. 60. Robbery is the felonious and violent taking of money, goods, or other valuable thing, from the person of another, by force or intimidation.

whom he or she may be intrusted, shall withdraw himself or herself and shall go away with the said money, goods, chattels, or property, or any part thereof, with the intent to steal the same, and defraud his or her master, employer, or any other person or persons, corporation or corporations, of the same, or being in the service of his or her said master, or employer, corporation or corporations, or any other person or firm, shall embezzle the said money, goods, chattels, or property, or any part thereof, or shall otherwise convert the same to his or her own use, shall be prima facie evidence of the intent to steal the same, and every such person or persons so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, stolen, or converted. *As amended, Stats. 1879, 122.*

EMBEZZLEMENT—SECTION 74 CONSTRUED. *Held*, that money received by a clerk who is intrusted by his employer with bills to collect, in the ordinary course of his business as a clerk, is money intrusted to him by his employer. *Ex Parte Ricori*, 11 Nev. 287.

INTENT IN EMBEZZLEMENT—How Determined. *State v. Trolson*, 21 Nev. 419.

Conversion by Bailee.

4726. SEC. 75. If any bailee of any money, goods, or property, shall convert the same to his or her own use, with the intent to steal the same, or to defraud the owner or owners thereof, he or she shall be deemed guilty of embezzlement, and on conviction thereof, if the amount or value of the property so converted or embezzled be fifty dollars or more, he or she shall be punished by imprisonment in the state prison, for a term not less than two nor more than five years; and if the amount or value of the property so converted or embezzled shall be less than fifty dollars, he or she shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. The term bailee, as used in this Act, shall be construed to include and mean all persons with whom any money, goods, or property has been deposited, and all persons to whom any goods or property has been loaned or hired, and all persons to whom any goods or property shall be delivered, for any purpose whatsoever, and all persons who shall, either as agent, collector, or servant, be empowered, authorized, or entrusted to carry, collect, or receive any money, goods or property of another; and any use of said money, goods, or property by any bailee thereof, other than that for which the same was borrowed, hired, deposited, carried, received, or collected, shall be prima facie evidence of conversion and of intent to steal the same and defraud the owner or owners thereof. *As amended, Stats. 1875, 99; 1879, 123.*

Embezzlement by Lodger.

4727. SEC. 76. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and, on conviction, shall be punished accordingly.

FORGERY AND COUNTERFEITING.

What Acts Considered Forgery.

4728. SEC. 77. Every person who shall falsely make, alter, forge, or counterfeit any record, or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any Auditor's warrant for the payment of the money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or

assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note, for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate reside in or belong to this state or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this state or not; every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years.

State v. Cleavland, 6 Nev. 181; State v. McKiernan, 17 Nev. 224.

Counterfeiting Coin.

4729. SEC. 78. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this state, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person, body politic, or corporation, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years.

Intent to Alter the Same.

4730. SEC. 79. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current, or hereafter to be current in this state, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years.

Counterfeiting Stamps, Labels, etc.

4731. SEC. 80. That every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine of not less than three hundred or more than six hundred dollars.

Goods Containing Forged Stamps.

4732. SEC. 81. That any person who shall sell any goods, wares, or merchandise having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine of not less than three hundred nor more than six hundred dollars.

Possessing or Receiving Forged Instruments, etc.

4733. SEC. 82. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bills, or bills

for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this state or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed to defraud any person or persons, body politic or corporate, whether in this state or elsewhere, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years.

Fictitious Papers.

4734. SEC. 83. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body, politic or corporate, either in this state or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check purporting to be the bill, note, or check, or other instrument in writing, for the payment of money or property of some bank, corporation, copartnership, or individual, where, in fact, there shall be no such bank, corporation, copartnership, or individual in existence, the said person knowing the said bill, note, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years.

Counterfeit Die or Plate.

4735. SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever made use of in counterfeiting the coin now made current or hereafter to be made current in this state, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years, and all such dies, plates, apparatus, paper, metal, or machine intended for the purpose aforesaid shall be destroyed.

Not Necessary to Prove Incorporation.

4736. SEC. 85. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or Act of incorporation, but the same may be proved by general reputation.

Experts.

4737. SEC. 86. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Counterfeiting Seal.

4738. SEC. 87. Every person who shall fraudulently forge or counterfeit the seal of this state, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal,

and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years.

Counterfeiting Gold Dust, etc.

4739. SEC. 88. If any person shall counterfeit any kind or species of gold dust, silver, gold bullion or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver currently passing in this state, or shall alter, or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years.

Possessing or Receiving Same.

4740. SEC. 89. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver, gold, bullion, or bars, lumps, pieces, or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver currently passing in this state, or entering in any wise into the circulating medium of the state, with intention to utter, put off, or pass the same, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years.

CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

Perjury and Subornation.

4741. SEC. 90. Every person having taken a lawful oath, or made affirmation, in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm willfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury, or subornation of perjury (as the case may be), and, upon conviction thereof, shall be punished by imprisonment in the state prison for any term not less than one nor more than fourteen years.

Deemed Murder.

4742. SEC. 91. Every person who, by willful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

SECS. 92, 93 and 94, concerning bribery, are superseded, Secs. 1831 and 1832.

SECS. 95 and 96, concerning official misconduct, are superseded, Secs. 1842 and 1843.

SEC. 97, concerning detention of records, is superseded, Sec. 1844.

Personating Another.

4743. SEC. 98. Every person who shall falsely represent or personate another, and, in such assumed character, shall marry another, become bail or surety for any party, in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument which, by law, may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable, in any event, to the payment of any debt, damages, cost, or sum of money, or his right or interest may, in any manner, be affected, shall, upon conviction, be

for the payment of money or property, with intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this state or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed to defraud any person or persons, body politic or corporate, whether in this state or elsewhere, shall, on conviction thereof, be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years.

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Counterfeit Die or Plate.

4735. SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever made use of in counterfeiting the coin now made current or hereafter to be made current in this state, or in counterfeiting bank notes or bills, upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one nor more than fourteen years, and all such dies, plates, apparatus, paper, metal, or machine intended for the purpose aforesaid shall be destroyed.

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4741. SEC. 90. Every person having taken a lawful oath, or made affirmation, in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm willfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury, or subornation of perjury (as the case may be), and, upon conviction thereof, shall be punished by imprisonment in the state prison for any term not less than one nor more than fourteen years.

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Personating Another.

4743. SEC. 98. Every person who shall falsely represent or personate another, and, in such assumed character, shall marry another, become bail or surety for any party, in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument which, by law, may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable, in any event, to the payment of any debt, damages, cost, or sum of money, or his right or interest may, in any manner, be affected, shall, upon conviction, be

punished by imprisonment in the state prison not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

Personating Another Same as Stealing.

4744. SEC. 99. Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

SEC. 100, concerning obstruction of officer, is superseded, Sec. 1845.

Releasing Prisoner After Conviction.

4745. SEC. 101. If any person or persons shall set at liberty, or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty, or rescue any person who shall have been found guilty, or convicted of a crime, the punishment of which is imprisonment in the state prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Releasing Prisoner Before Conviction.

4746. SEC. 102. If any person shall set at liberty, or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable in the state prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the state prison not less than one, nor exceeding ten years; and if the person rescued, or set at liberty, stands charged, committed, or convicted of any misdemeanor, or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued, or set at liberty, if he or she had been found guilty.

SEC. 103, concerning escapes, is superseded, Sec. 1846.

Aiding Escape.

4747. SEC. 104. If any person shall carry to any convict imprisoned, or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisoned in the state prison not less than one year nor exceeding five years.

On Civil Process.

4748. SEC. 105. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Aiding an Attempted Escape.

4749. SEC. 106. If any person shall aid or assist a prisoner, lawfully imprisoned or detained in custody for any offense against this state, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey, or cause to be delivered, to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape, or attempt to escape, be actually made) shall, on conviction, be punished by fine, not exceeding five thousand dollars, and imprisoned in the state prison not less than one year nor exceeding five years.

SECS. 107 and 108, concerning escapes and refusal to arrest, are superseded, Sec. 1843.

Compromising Offenses.

4750. SEC. 109. Every person having a knowledge of the actual commission of any offense, punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offense or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months; *provided*, that this section shall not apply to those offenses which may lawfully be compromised by leave of the court.

Cheating and Defrauding—Penalty.

4751. SEC. 110. If two or more persons shall conspire either to commit any offense or falsely and maliciously to indict another for any offense, or to procure another to be charged or arrested for any such offense, or falsely to move or maintain any suit, or to cheat or defraud any person of any property by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretenses, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any acts injurious to the public health, to public morals or to trade or commerce, or for the perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars; *provided*, that it shall not be necessary to procure conviction under this section, to prove any overt act done in pursuance of said conspiracy; *and provided further*, that no part of this Act shall be construed in any court of this state to restrict or prohibit the orderly and peaceably assembling or coöperation of persons employed in any profession, trade or handicraft for the purpose of securing an advance in the rate of wages, or compensation, or for the maintenance of such rate. *As amended, Stats. 1887, 82.*

Wrongful Exercise of Official Power.

4752. SEC. 111. If any person shall willfully take upon himself to exercise or officiate in any office or place of another, in this state, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding one thousand dollars.

Embracery.

4753. SEC. 112. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer, who shall directly or indirectly promise, or offer to any juror, or procure any juror to take money, or any other bribe, present, or reward, or any contract, obligation, or security for the payment or delivery of any money, present, reward or any other thing, or shall corruptly influence, or attempt to influence, any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the state prison not less than one year, nor exceeding five years; and any juror, convicted of taking any money, present, reward, or any other thing, or corruptly being influenced, as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

There is no such crime known to the law as an attempt to commit embracery. Embracery is itself but an attempt to do a wrong. There can be no indictment for an attempt to attempt. *State v. Sales, 2 Nev. 268.*

SEC. 113, concerning extortion, is superseded, Sec. 1834.

SECS. 114 and 115, concerning malfeasance in office, are superseded, SECS. 1849 and 1850.

Threatening.

4754. SEC. 116. If any person shall knowingly send or deliver any letter or

writing threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable thing; or threatening to maim, wound, kill, or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities, though no money, goods, chattels, or other valuable thing be demanded; or writes and sends, or writes and delivers, either through the mail, express, by private parties, or otherwise, any anonymous letter, or any letter bearing a fictitious name, charging any person with crime, or writes and sends any anonymous letter or letters bearing a fictitious name, containing vulgar or threatening language, obscene pictures, or containing reflections upon his or her standing in society or in the community, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months. *As amended, Stats. 1885, 39.*

Opening Sealed Letters.

4755. SEC. 117. Every person who shall willfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it shall be addressed; and any person who shall maliciously publish the whole, or any part of such letter, without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

Disturbing the Peace.

4756. SEC. 118. If any person shall, maliciously and willfully, disturb the peace or quiet of any neighborhood, or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisonment in the county jail not more than two months.

Assembling to Disturb the Peace.

4757. SEC. 119. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse, on being desired or commanded so to do by a Judge, Justice of the Peace, Sheriff, Coroner, Constable, or other public officer, the person so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisonment in the county jail not more than six months.

Affray.

4758. SEC. 120. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

Unlawful Assemblage.

4759. SEC. 121. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

Rout and Riot.

4760. SEC. 122. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not

exceeding five hundred dollars, or imprisonment in the county jail not more than six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do a lawful act, in a violent, tumultuous, and illegal manner they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each or by imprisonment in the county jail for any term of time not exceeding six months, or by both such fine and imprisonment.

Disturbing Religious Meetings.

4761. SEC. 123. Every person who shall willfully disquiet or disturb any congregation, or assembly of people met for religious worship, by making a noise, or by rude or indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Selling Liquor at Camp Meetings.

4762. SEC. 124. Every person who shall erect or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or fermented liquors, or any drink of which wine, spirituous, or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars.

SEC. 125, concerning official neglect, is superseded, Sec. 1851.

Libel.

4763. SEC. 126. A libel is a malicious defamation, expressed either by printing, or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule; every person, whether the writer or the publisher, convicted of the offense, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motive and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE.

Bigamy.

4764. SEC. 127. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this state being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the state prison not less than one year nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this state, cohabitation in this state after such second marriage shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be, at the time of such second marriage,

divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

BIGAMY—Evidence of Lack of Criminal Intent Not Admissible. *State v. Zichfeld*, 23 Nev. 305.

Marrying a Married Person.

4765. SEC. 128. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not less than one thousand dollars, or imprisoned in the state prison not less than one nor more than two years.

Incest.

4766. SEC. 129. Persons being within the degree of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the state prison not less than one nor exceeding ten years.

Obstructing Highway or Stream.

4767. SEC. 130. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any city, town or village, or any public bridge or causeway, mill race, mill dam, or ditch, or public river or stream, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall, in any wise, pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, city, town, village, or neighborhood thereof, every person so offending shall, upon conviction, be fined not exceeding one thousand dollars, and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the Sheriff of the county.

Selling Diseased Flesh, etc.

4768. SEC. 131. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months.

Defacing Proclamations, etc.

4769. SEC. 132. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this state, or any proclamation, advertisement, or notification, set up at any place in this state, by authority of any law of the United States, or of this state, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month; *provided*, that this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order, after the time for which the same was by law to remain set up shall have expired.

Implements for Burglary Found in Possession.

4770. SEC. 133. If any person shall be found having upon him or her any picklock, crow-key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, shop, warehouse, or other building, containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the state prison not less than one year nor more than five years; and if any person shall have upon him any pistol, gun, knife dirk, bludgeon, or other offensive weapon, with intent to assault any

person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Refusing to Join Posse.

4771. SEC. 134. Every male person, above eighteen years of age, who shall neglect or refuse to join the posse comitatus, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any Sheriff, Deputy Sheriff, Coroner, Constable, Judge, or Justice of the Peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty, nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

Fraudulent Conveyances.

4772. SEC. 135. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay, creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same, or any of them, as true and done, had, or made, in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not less than six months.

Credit by False Representations.

4773. SEC. 136. If any person, by false representations of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing, or if any person shall cause, or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months.

False Pretenses.

4774. SEC. 137. If any person or persons shall knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any person or persons of the same; every person so offending shall be deemed a cheat, and on conviction shall be imprisoned in the state prison not more than ten years nor less than one year, and be sentenced to restore the property so fraudulently obtained, if it can be done; *provided*, that should the value of any chose in action, money, goods, wares, chattels, effects, or other valuable thing so, as aforesaid, fraudulently obtained, not exceed in value the sum of fifty dollars, every person so offending shall be deemed a cheat, and on conviction shall be imprisoned in the county jail not more than six months, or be fined in any sum not exceeding five hundred dollars, or by both such fine

and imprisonment, and be sentenced to restore the property so fraudulently obtained, if it can be done. *As amended, Stats. 1875, 103.*

Fraudulently Selling Real Estate.

4775. SEC. 138. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands or town lot or lots, who shall again, knowingly and fraudulently, sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the state prison not less than one year or more than five years.

False Weight, etc.

4776. SEC. 139. If any person or persons shall knowingly buy or sell any goods, wares, or merchandise, or any valuable thing by false weight or measure, or shall knowingly use any false measure or false weight at any mill in taking toll for grinding corn, wheat, rye, or other grain, or shall knowingly use any false weight or weights, or false scales, or false steelyards, or false balances, or false measures for any purpose in buying or selling or trading any article whatever, he or she shall be deemed a common cheat, and on conviction shall be fined in any sum not to exceed two hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. *As amended. Stats. 1881, 30; 1881, 107.*

Removal of Property to Defraud.

4777. SEC. 140. If any debtor shall fraudulently remove his property or effects out of this state, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Fraudulent Concealment, etc.

4778. SEC. 141. Any person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

FRAUDULENT AND MALICIOUS MISCHIEF.

Cattle, Killing Of.

4779. SEC. 142. Every person who shall willfully or maliciously wound or kill, with firearms, knives, or other deadly weapon, any cattle or domestic animal belonging to another person, or administer any poison to, or expose any poisonous substance with the intent that the same shall be taken or swallowed by any cattle or domestic animal belonging to another person, shall on conviction be punished by imprisonment in the state prison not less than one year nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. *As amended, Stats. 1877, 76.*

Injuring Animals or Goods.

4780. SEC. 143. Every person who shall cruelly beat or torture any horse, ox, mule, or other animal, whether belonging to himself or to any other person, shall be punished by a fine of not less than thirty or more than one hundred dollars, or by imprisonment in the county jail or prison of any incorporated city

or town, for a period not to exceed thirty days, or by both such fine and imprisonment; and it is hereby made the duty of each Sheriff, Constable, police officer, Justice of the Peace, Police Judge, or City Recorder within this state to enforce the provisions of this section of this Act. And every person who shall willfully, unlawfully, and maliciously destroy, burn, cut, or otherwise injure any goods, chattels, or property of any description whatever belonging to another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. *As amended, Stats. 1866, 138.*

Destruction of Property—Trees—Posting Bills.

4781. SEC. 144. Any person who shall willfully, unlawfully, and maliciously break, destroy, or injure the door or window of any dwelling house, shop, store, or other house or building, or the door, window, grating, platform, wheels, or other part of any railroad car, or sever therefrom, or from any gate, fence or inclosure, any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate, post, railing, or fence, or any part thereof, or break, destroy, or injure, any steamer, or other sailing craft, or cut down, lap, girdle, otherwise injure or destroy any fruit or ornamental, or shade tree, being the property of another, or who shall, without the consent of the owner, agent, or occupant of the premises or property herein mentioned, deface, disfigure, or cover up any fruit tree, or ornamental tree, fence, wall, house, shop, or building, the property of another, by pasting upon, or in any way fastening thereto, any printed bill, sign-board, show-poster, or other device whatsoever, or who shall, without a written permit from the Board of County Commissioners, in the county wherein such written permit may be issued, deface, disfigure, or cover up by pasting upon, or in any way fastening thereto, any printed bills, sign-board, show-poster, or other device whatsoever upon any public building, monument, gravestone, ornamental tree, or other object or property under the supervision and control of the Board of Commissioners of the respective counties in this state, or under the supervision and control of any municipal government, or of any association or society whatsoever, shall for each and every such offense be deemed guilty of a misdemeanor, and, on conviction, be fined in any sum not exceeding two hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. *As amended, Stats. 1873, 144; 1879, 60.*

Murphy v. Rising, 10 Nev. 97.

Injuring Rafts, etc.

4782. SEC. 145. Every person who shall willfully and maliciously burn, injure, or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose, or set adrift any such raft or part thereof, or shall cut, break, injure, sink, or set adrift any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

Injury to Dam, Bridge, etc.

4783. SEC. 146. Every person who shall willfully and maliciously cut, break, injure, or destroy any bridge, mill dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall willfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment in the state prison not less than one year nor more than two years, or both such fine and imprisonment.

Injury to Jail, etc.

4784. SEC. 147. If any person shall, willfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the state prison for any term not exceeding five years nor less than one year.

Firing Woods or Prairies.

4785. SEC. 148. If any person or persons shall, willfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire, any wood, prairies, grass, or other lands, or grounds, in this state, every person so offending shall, on conviction, before any court of competent jurisdiction, be fined in any sum not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than ten days nor more than six months, or by both such fine and imprisonment, in the discretion of the jury trying the case; *provided*, that this section shall not extend to any person or persons who shall set on fire any wood, prairies, grass, or other lands adjoining their own farm, house, plantation, or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, her, or their neighbors reasonable notice of such intention.

MISCELLANEOUS OFFENSES.**Issuing Paper Money—Duties of District Attorneys.**

4786. SEC. 149. If any person or persons, association, company, or corporation, shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company, or corporation, or the persons forming the same, shall, for the first offense, be deemed guilty of a misdemeanor, and for each and every subsequent offense, be deemed guilty of felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this Act, shall be punished, for the first offense, by imprisonment in the county jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second and every subsequent offense, shall be punished by imprisonment in the state prison for a term not less than one year nor more than five years, at the discretion of the court before whom such person or persons shall be tried and convicted. It shall be the duty of the District Attorney for each judicial district in the state to prosecute all offenses against this Act, and it shall be the duty of the Judges of the courts to give this law in the charge of the grand jury, who shall inquire into and present all cases of a violation thereof.

Vending Without License.

4787. SEC. 150. Any person or persons who shall vend, by wholesale or retail, any spirituous, or malt, or vinous liquors, or any goods, wares, or merchandise, within any county in this state, without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, be fined in a sum of not less than twenty-five nor more than two hundred dollars, for each and every offense. Any Justice of the Peace of the county in which such offense is charged to have been committed, shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this Act, the defendant shall be deemed not to have procured any such license, unless he prove the contrary to the satisfaction of the court or jury by whom the same is tried. All fines collected under this Act shall be paid into the treasury of the county in which the conviction is had.

GENERAL PROVISIONS.

Common Law Crimes.

4788. SEC. 151. All offenses recognized by the common law as crimes, and not herein enumerated, shall be punished, in case of felonies, by imprisonment in the state prison for a term not less than one year nor more than five years, and in case of misdemeanors, by imprisonment in the county jail for a term not exceeding six months or less than one, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment; and whenever any fine is imposed for any felony or misdemeanor, whether such by statute or at common law, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the state prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

SEC. 152 obsolete.

Effect of Sentence.

4789. SEC. 153. A sentence of imprisonment in the state prison for a term less than life, suspends all civil rights of the person so sentenced, during the term of imprisonment, and forfeits all public offices, and all private trusts, authority, and power; and the person sentenced to such imprisonment for life, shall thereafter be deemed civilly dead.

"Person" Defined.

4790. SEC. 154. Where the term "person" is used in this Act to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this state, or any other state or territory, government, or county, which may lawfully own any property within this state, and all public and private corporations, as well as individuals.

Females Liable.

4791. SEC. 155. The provisions of this Act shall extend to females.

Intent to Injure, Defraud, etc.

4792. SEC. 156. When any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offense, it shall be sufficient if such intent be to injure, defraud, or cheat, the United States, this state, or any other state, territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic or private individuals.

Reward May Be Offered.

4793. SEC. 157. If any person who has been sentenced to confinement in the state prison, by any court having competent authority within this state, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the Governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or their apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the general fund.

Attempt to Commit Offense.

4794. SEC. 158. Every person who shall attempt to commit a public offense, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: First—If the offense so attempted to be committed be such as is punishable by death or by imprisonment in the state prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding ten years. Second—If the offense so attempted is a misdemeanor, the person so convicted of such attempt shall be punishable by a fine not exceeding one-half of the largest amount, or by imprisonment in the county

jail or state prison, as the case may be, for a term not exceeding one-half of the longest time prescribed by law, upon a conviction of the offense so attempted. Third—If the offense so attempted is a felony, not punishable by death or imprisonment, which may extend to life, the person convicted of such offense shall be punished by imprisonment in the state prison for a term not exceeding one-half the longest time which may be imposed upon a conviction of the offense so attempted.

SEC. 159 obsolete.

An Act supplementary to an Act concerning crimes and punishments, approved November twenty-six, eighteen hundred and sixty-one.

Approved March 1, 1883, 96.

Using Public Money, Misdemeanor.

4795. SECTION 1. Every public officer or other person who shall have in his possession, control or custody any public money belonging to the State of Nevada, or to any county, town, city, district, or municipal corporation within this state, or to whom any such public money shall be intrusted for safe keeping, or for transmission to any Treasurer, other officer or person entitled to receive the same, who shall use any of such public money for his own private purposes, or for any purpose other than one duly authorized by law, shall, if the amount so unlawfully used be fifty (\$50) dollars or less, be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not less than one hundred (\$100) dollars, and not more than five hundred (\$500) dollars, or by imprisonment in the county jail not less than one month nor more than six months, or by both such fine and imprisonment.

When a Felony.

4796. SEC. 2. Every public officer or other person who shall have in his possession, control, or custody any public money belonging to the State of Nevada, or to any county, town, city, district, or municipal corporation within this state, or to whom any such public money shall be intrusted for safe keeping or for transmission to any Treasurer or other officer, or other person entitled to receive the same, who shall use any of such public money for his own private purposes, or for any purpose other than one duly authorized by law, shall, if the amount unlawfully used be more than fifty dollars, be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for a term not less than one year or more than fifteen years.

An Act to prevent the unauthorized expenditure of state money.

Became a law February 8, 1881, 31.

Compensation Prohibited.

4797. SECTION 1. No money shall be paid out of the state treasury in payment of the salary or compensation of the clerk or secretary of any commission connected with the state government, or for any clerical work done, performed, or rendered to such commission, except in pursuance of a direct and explicit appropriation by law to pay for such service; and the State Controller is hereby prohibited from drawing his warrant in payment of such salary or compensation unless authorized by a law making an explicit appropriation for that purpose.

Employment of Clerks Prohibited.

4798. SEC. 2. Any state officer employing or paying any person or persons out of any state money for any such service or labor, as hereinbefore set forth, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined in the sum of five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

An Act to prevent fraud and enforce official duty in certain cases.

Approved March 1, 1883, 80.

Altering Legislative Measures.

4799. SECTION 1. Every person who fraudulently alters the drafts of any bill or resolution which has been presented to either of the houses composing the legislature to be passed or adopted, with intent to procure it to be passed or adopted by either house in language different from that intended by such house, is guilty of felony, and upon conviction thereof shall be fined in a sum not less than five hundred dollars nor more than two thousand dollars, or confined in the state prison for a period not less than one year nor more than five years, or both such fine and imprisonment, at the discretion of the court.

Enrolled Bills.

4800. SEC. 2. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature of this state, with intent to procure it to be approved by the Governor, or certified by the Secretary of State, or printed or published by the printer of the statutes in [in] language different from that in which it was passed or adopted by the legislature, is guilty of felony, and upon conviction thereof shall be punished as provided in section one of this Act.

Bribing Legislators.

4801. SEC. 3. Every person who obtains or seeks to obtain money or other thing of value from another person upon a pretense, claim or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative action, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period of not less than two nor more than ten years. Upon the trial for violations of this section no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged on the grounds that such testimony may criminate himself, but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

An Act to more fully define the crime of larceny.

Approved February 9, 1883, 34.

Conversion of Realty to Personalty, Grand Larceny.

4802. SECTION 1. Every person who shall convert any manner of real estate, of the value of fifty dollars or over, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take and carry away the same, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

Same, Petit Larceny.

4803. SEC. 2. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take and carry away the same, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be punished by imprisonment in the county jail for a period of not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

An Act to further define and punish embezzlement.

Approved February 24, 1886, 81.

Defined.

4804. SECTION 1. Any person, or any agent, manager or clerk of any person,

corporation, association or partnership with whom any money, property or effects shall have been deposited or entrusted, who shall use or appropriate such money, property or effects or any part thereof in any manner or for any other purpose than that for which the same was deposited or entrusted, shall be guilty of embezzlement.

Imprisonment.

4805. SEC. 2. Every person, agent, manager or clerk convicted under the provisions of this Act shall be imprisoned in the state prison not less than one nor more than fifteen years.

An Act to prohibit the sale or removal of mortgaged personal property.

Approved March 17, 1891, 63.

Mortgagor Shall Not Sell.

4806. SECTION 1. The mortgagor of personal property shall not sell or dispose of any such property, or remove the same from the county wherein the mortgage on said property is recorded, during the time said mortgage is in force, with intent to hinder, delay, or defraud the said mortgagee, without the written consent of the mortgagee first had and obtained.

Punishment.

4807. SEC. 2. Any person violating any of the provisions of section one of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

An Act to regulate the business of assaying within the State of Nevada.

Approved March 3, 1869, 113.

Description on Bullion.

4808. SECTION 1. Every person or firm now engaged in, or who may hereafter engage in, the business of assaying within the State of Nevada, shall be required to place a written description, pasted on or stamped upon, every bar of bullion or amalgam melted, retorted, assayed, or refined by such person or firm, the name of the person or company by whom such bullion or amalgam was deposited with or sold to such person or firm.

Neglect or Refusal to Stamp Bullion.

4809. SEC. 2. Every person or firm within the State of Nevada engaged in or carrying on the business mentioned in the first section of this Act, who shall neglect or refuse to comply with its provisions, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars, and shall be imprisoned in the county jail not less than one month nor more than six months, for each and every such refusal or neglect.

IS THIS ACT CONSTITUTIONAL? See State v. Silver, 9 Nev. 227.

An Act for the prevention of fraud and the better protection of miners in the sale and purchase of ores.

Approved February 20, 1883, 44.

Changing Value of Ores.

4810. SECTION 1. Any person, corporation, or association, or the agent of any person, corporation, or association, engaged in the milling, smelting, sampling, concentrating, reducing, shipping, or purchasing of ores in this state, who shall in any manner knowingly alter or change the true value of any ores delivered to him or them, so as to deprive the seller of the correct value of the

same, or who shall substitute other ores for those delivered to him or them, or who shall issue any bill of sale, or certificate of purchase, that does not exactly and truthfully state the actual weight, assay value, and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding, or agreement with another, shall issue a bill of sale or certificate of purchase that does not correctly and truthfully set forth the weight, assay value, and total amount paid for any lot or lots of ore purchased by him or them, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding one thousand dollars, nor less than one hundred dollars, or imprisonment in the county jail not more than one year, or both, at the discretion of the court.

An Act to regulate the sale or disposal of opium, and to prohibit the keeping of places of resort for smoking, or otherwise using that drug.

Approved February 9, 1877, 69.

Use and Sale Prohibited.

4811. SECTION 1. From and after the last day of March, eighteen hundred and eighty-one, it shall be unlawful for any person or persons, as principals or agents, to have in his, her or their possession any opium pipe, or part thereof, or to smoke opium, or to sell or give away for such purpose, or otherwise dispose of any opium in this state, except druggists and apothecaries; and druggists and apothecaries shall sell it only on the prescription of legally practicing physicians. *As amended, Stats. 1881, 153.*

Opium Smoking—Punishment.

4812. SEC. 2. Any person or persons, who shall be found guilty of violating the provisions of this Act shall, on legal conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment, as the court shall adjudge, and the court pronouncing a judgment of conviction under this Act shall declare such opium and pipes contraband and unlawful, and direct and order that all opium and all pipes and utensils used in smoking opium, taken and found, destroyed by the officer or person having the possession thereof as soon as the same is no longer necessary for the purposes of evidence. *As amended, Stats. 1879, 121; 1881, 153; 1885, 47; 1889, 101.*

Fee of District Attorney.

4813. SEC. 3. In all cases when fines and costs shall be paid by the defendant under the provisions of this Act, the fee of the District Attorney shall be twenty-five dollars, and the fee of the informer shall be fifteen dollars; but neither of said fees shall in any case under the provisions of this Act be a charge against or be paid by the county in which the offense was committed, or in which the defendant was convicted of the crime.

Liability of Property Owner.

4814. SEC. 4. Any person or persons who shall keep, or who, being the owner thereof, shall knowingly permit to be kept, any house, room, apartment, or other place of any kind, to be used as a place of resort by any person or persons for the purpose of indulging in the use of opium, or any preparation containing opium, by smoking or otherwise, shall, on legal conviction thereof, be punished as provided in this Act. *As amended, Stats. 1879, 121.*

"Person" and "Agent" Defined.

4815. SEC. 5. The term "person or persons," as used in this Act, shall include copartnerships and associations, and the term "agents," as used in this Act, in addition to its usual meaning, shall include all persons who act for another, or other person or persons, or for corporations, either domestic or foreign.

1. RESORT—MEANING OF. The word "resort" as used in the Opium Act, means to go once, or more, to a place kept for opium smoking. *State v. Ah Sam, 15 Nev. 27.*

PLACE OF RESORT. A room where all apparatus for opium smoking is found, and a number of persons, white men and Chinamen, are present, is a place of resort within the meaning of those words, as used in the statute. *Id.*

ACT HELD CONSTITUTIONAL. *Id.*

2. **ACT HELD CONSTITUTIONAL.** *State v. Ah Chew*, 16 Nev. 50; *State v. Ah Gonn*, 16 Nev. 61.

3. **OPIUM ACT—SALE BY PHYSICIANS.** To make a defense for the sale of opium by a practicing physician complete, the defendant must show that he comes within the provisions of the "Act to prevent the practice of medicine and surgery by unqualified persons." *State v. Ching Gang*, 16 Nev. 62.

4. **MODE OF USING OPIUM NOT ESSENTIAL.**—Sufficiency of Indictment. *State v. On Gee How*, 15 Nev. 184.

An Act amendatory and supplementary of an Act entitled "An Act to regulate the sale or disposal of opium, and to prohibit the keeping of places of resort for smoking or otherwise using that drug," approved February ninth, eighteen hundred and seventy-seven.

Approved March 8, 1879, 121.

SECTION 1 amends Sec. 2, and Sec. 2 amends Sec. 4 of the preceding Act.

Property Owner Liable.

4816. SEC. 3. If any person shall knowingly permit any house, room, apartment, or other place owned by him or her, to be used for the purpose of a resort to indulge in the use of opium or any preparation containing opium, by smoking or otherwise, he or she shall, on legal conviction thereof, be punished as provided in this Act.

Judgment to Become a Lien.

4817. SEC. 4. Any judgment obtained under the provisions of this Act, for a fine and costs, or either, shall be a lien on the property wherein the offense was committed, which lien shall not be discharged until such judgment shall have been paid, or otherwise legally satisfied; *provided*, that such lien shall not attach in cases where it shall appear that the owner of the property was not a party to the commission of the offense, and had no knowledge thereof before its commission.

Forfeiture of Lease.

4818. SEC. 5. If any person shall use any house, room, apartment, or other place leased to him or her for any of the purposes forbidden by this Act, such illegal use shall, at the option of the lessor, operate as a forfeiture of such lease, and of all rights given thereby, whether the same be expressed or not in such lease.

Unlawful to Resort.

4819. SEC. 6. It shall not be lawful for any person to resort to any house, room, or apartment, or other place kept for any of the purposes forbidden by this Act, for the purpose of indulging in the use of opium, or any preparation containing opium, by smoking or otherwise, and any person who shall violate the provisions of this section, shall, on legal conviction thereof, be punished, as provided by this Act.

Lessor Liable.

4820. SEC. 7. Any person leasing any house, room, apartment, or other place to be used as a place of resort, to any person or persons, for the purpose of indulging in the use of opium, or any preparation containing opium, knowing the purposes for which said house, room, or apartment are to be used, any judgment obtained as provided in section four of this Act, shall be a lien upon such house, room, apartment, or other place of business so leased.

Take Effect.

4821. SEC. 8. This Act shall take effect and be in force on and after the first day of May, A. D. eighteen hundred and seventy-nine, and shall be given in

charge specially by all Judges of the District Court of this state to grand juries when impaneled.

An Act amendatory of and supplementary to an Act entitled "An Act to restrict the sale of cigarettes, cigars and tobacco," approved February 23, 1887.

Approved March 7, 1889, 82.

Unlawful to Sell Tobacco to Minors.

. 4822. SECTION 1. From and after the passage of this Act it shall be unlawful for any person or persons within this state to sell or give to any minor, under the age of eighteen years, any cigarette or cigarettes, or any tobacco of any description, except that upon the written order of the parent or guardian of the minor, the person applied to may give or sell to the minor, for the use of the guardian or parent, tobacco or cigars; said written request to be kept on file by the seller or giver of the article so sold or given away.

Penalty.

4823. SEC. 2. Any person within this state who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, on conviction thereof before any Justice of the Peace, shall be fined in any sum not exceeding five hundred dollars and not less than one hundred dollars, or imprisoned in the county jail for a period not exceeding six months nor less than fifty days, or by both such fine and imprisonment. The Justice of the Peace shall also tax as costs fifty dollars, in addition to the fine, to be paid to the informer.

Shall Forfeit License.

4824. SEC. 3. If any dealer in cigarettes, cigars and tobacco shall be convicted twice for the commission of the offense described in the first section of this Act, he shall forfeit his license or licenses for carrying on his business, and no license shall be again granted to him to carry on a like business in the State of Nevada.

An Act to prohibit the sale of ardent spirits within the capitol building of the State of Nevada.

Approved February 25, 1895, 17.

Prohibits Liquors in Capitol Building.

4825. SECTION 1. Any person who shall, on and after the first day of April, one thousand eight hundred and ninety-five, sell, barter, give, or in any way dispose of, any spirituous or malt liquors, wines or cider, of any description whatever, within the capitol building of this state, shall be deemed guilty of a misdemeanor and upon conviction thereof, before any court of competent jurisdiction, shall be fined in any sum, not less than one hundred dollars, and not exceeding five hundred dollars, or be imprisoned in the county jail for any time, not less than one month and not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

An Act to authorize and empower the Board of State Prison Commissioners to purchase for and on behalf of the State of Nevada, the property known as the Warm Springs hotel, adjoining and west of the state prison, and matters properly connected therewith, and prohibiting the sale of intoxicating liquors.

Approved March 11, 1879, 129.

SECTIONS 1, 2, 3 and 5 of this Act are obsolete.

Sale of Liquor Prohibited, Where.

4826. SEC. 4. From and after the first day of April, A. D. eighteen hundred and seventy-nine, it shall be unlawful for any person or persons to sell by whole-

sale or retail any spirituous or malt liquors, wine or cider, within one-half mile of the state prison of the State of Nevada, and no license shall be granted authorizing the sale of any spirituous or malt liquors, wine, or cider, within one-half mile of said state prison after the date in this section mentioned. A violation of the provisions of this section shall, on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than twenty-five days, nor exceeding six months.

An Act to prohibit the sale of intoxicating drinks to minors.

Approved March 7, 1873, 177.

Misdemeanor—Penalty.

4827. SECTION 1. Every person who shall sell or give to any person, without a written order, under the age of twenty-one years, or to any one known to be an imbecile, any intoxicating drink or drinks, and every minor who shall falsely represent himself to be twenty-one years of age in order to obtain such intoxicating drink or drinks, is guilty of a misdemeanor, and shall be punished by a fine not to exceed one hundred dollars, or imprisonment in the county jail not to exceed fifty days, or by both such fine and imprisonment; *provided*, that nothing in this Act shall be deemed to apply to parents of such minors and imbeciles, or guardians of their wards, or physicians. *As amended, Stats. 1881, 121; 1899, 99.*

Fines to Go to School Fund.

4828. SEC. 2. All moneys collected for fines under the provisions of this Act, shall, after deducting cost of suit, be paid over to the County Treasurer, and by him paid into the school fund of his county.

An Act to prohibit the sale of ardent spirits to the Indians.

Approved February 25, 1885, 41.

Penalty.

4829. SECTION 1. Any person who shall, after the passage of this Act, sell, barter, give, or in any manner dispose of any spirituous or malt liquors, wine, or cider, of any description whatever, to any Indian within this state, shall be deemed guilty of a misdemeanor, and upon due conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than one hundred dollars and not exceeding five hundred dollars, or be imprisoned in the county jail for any time not less than one month and not exceeding six months, or by both such fine and imprisonment in the discretion of the court. *As amended, Stats. 1887, 37; 1893, 104.*

Disposition of Fines.

4830. SEC. 2. All fines imposed and collected under the provisions of this Act shall be paid into the school fund and the court before whom the conviction is had, is hereby authorized and empowered to tax as part of the costs, the sum of one hundred dollars against the defendant, which last named sum shall go to the informer; and in the event of the failure or refusal of the defendant to pay or cause to be paid the said costs of one hundred dollars, the same shall remain as a judgment against the defendant until his or her full term of imprisonment shall have expired; *provided*, that in no case shall the informer have any claim or demand against the county or state. *As amended, Stats. 1887, 37.*

Qualifications of Witnesses.

4831. SEC. 3. In all cases prosecuted under the provisions of this Act, Indians shall be competent witnesses against Chinese, and as against white persons the evidence of the Indian, or Indians, may be taken by the court or jury for what it may be deemed worth.

SEC. 4 repealed, Stats. 1887, 37.

SEC. 5 obsolete.

Repeal.

4832. SEC. 6. An Act entitled "An Act to prohibit the sale of ardent spirits, firearms, or ammunition to the Indians," approved December seventeenth, eighteen hundred and sixty-two, and all other Acts in conflict with the provisions of this Act, are hereby repealed.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November twenty-sixth, eighteen hundred and sixty-one.

Approved February 23, 1877, 84.

Obstruction of Railroad Track, Felony.

4833. SECTION 1. Every person who shall willfully and maliciously place any obstruction on the track of any railroad in the state, now in operation or which may hereafter be put in operation therein, or shall tear up or remove any part or portion of such railroad, or shall destroy, derange, misplace, or injure any rail, switch, culvert, viaduct, bridge, car, tender, or engine, or willfully and maliciously do attempt to do any or either of said things, or any other act or thing, whereby the life and limb of any person may be endangered, shall be deemed guilty of a felony, and shall, upon conviction, be punished with imprisonment in the state prison for a period not exceeding twenty-one years.

An Act prescribing the penalties for the violation of any law of this state regulating the charges for the transportation of persons and property by railroads in this state.

Approved March 8, 1879, 110.

Liability of Railroads.

4834. SECTION 1. Any individual, company or corporation operating any railroad in this state, and every agent of such company or corporation who shall violate or attempt to violate, or suffer or permit to be done any act, matter or thing in violation of any of the provisions of any statute of this state, which prescribes or regulates the charges which may be made and collected by any individual, company or corporation operating any railroad in this state, for the transportation of either persons or property, shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine of two thousand dollars.

An Act for the protection of agricultural lands and preservation of water.

Approved March 9, 1865, 348.

Penalty for Depositing Rubbish in Streams.

4835. SECTION 1. Any person or persons who shall deposit or allow to be deposited by any person or persons in their employ, into any stream or streams of water, any sawdust, rubbish, or filth, that will render such water impure or unfit for drinking or cooking purposes, or in any way injurious to any agricultural lands, upon which it may be necessary for the owner or owners of such lands to use such water for irrigating purposes, shall be deemed guilty of misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined within the sum of not less than twenty-five dollars nor more than five hundred dollars, exclusive of court costs; *provided*, that nothing in this Act shall apply to those engaged in working ores.

Fines, How Distributed.

4836. SEC. 2. All fines collected under the provisions of the preceding section of this Act shall be distributed as follows: One-half to be paid into the school fund of the county in which such complaint shall have been made; the other half shall be paid to the party or parties making the complaint.

An Act to prevent the escape of prisoners.

Approved December 10, 1862, 9.

Not to Communicate With Prisoners.

4837. SECTION 1. No person shall visit, or in any manner communicate with any prisoner convicted of or charged with any felony, imprisoned in the county jail, other than the officer having such prisoner in charge, his attorney, or the District Attorney, except such person has a written permission so to do, signed by the District Attorney, and consented to by the Constable, Sheriff, or Warden, having such prisoner in charge.

Penalty.

4838. SEC. 2. Any person violating, aiding in, conniving, or participating in the violation of the foregoing section of this Act, shall, on conviction thereof, be fined in any sum not exceeding five thousand dollars, or imprisoned in the state prison not exceeding one year, or by both such fine and imprisonment.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November twenty-sixth, eighteen hundred and sixty-one.

Approved March 1, 1866, 166.

Punishment for Breaking Prison.

4839. SECTION 1. Every person lawfully confined in the state prison of the State of Nevada, under judgment of imprisonment in said prison, who shall escape therefrom, or break out of such prison, or make any overt attempt to escape from or break out of such prison, shall, on conviction thereof, be punished by imprisonment in the state prison not less than one nor more than ten years.

For Escaping from Jail or Officer.

4840. SEC. 2. Every person lawfully confined in a county jail, or in the custody of any officer or person, under a lawful arrest, who shall escape or break away from such officer or person, or shall escape from or break out of, or attempt to escape from or break out of, such jail, shall, on conviction thereof, be punished by a fine of not less than one hundred and not more than five thousand dollars, or by imprisonment in the county jail for a term not less than one month, and not more than one year, or by both such fine and imprisonment; and in case such person is under arrest, or confined in jail, upon a charge of felony, and so escape, or break away from, such arrest, or escape from, or break out of, or attempt to break out of, such jail, then, upon conviction, he shall be punished by imprisonment in the state prison not less than one nor more than ten years.

1. BAD CONDITION OF JAIL NO EXCUSE—What Constitutes an Escape—Force Not Necessary. *State v. Davis*, 14 Nev. 439.
2. OVERT ATTEMPT TO ESCAPE FROM PRISON—Indictment. *State v. Angelo*, 18 Nev. 425.
3. PRISON-BREAKING—ESSENTIALS OF THE OFFENSE. Before any person can be found guilty of prison-breaking, the imprisonment from which he attempted to break must be shown to be lawful. *Ex Parte Ah Bau*, 10 Nev. 264.

Escape from State Prison or Jail.

4841. SEC. 3. Any person confined in the state prison of this state, or in any county jail, under a sentence of a court of competent jurisdiction, who, during the term of his imprisonment, shall, after the passage of this Act, escape from such state prison or county jail, and be retaken, may, upon conviction thereof, be imprisoned in the state prison for a term not exceeding ten years, nor less than one year, which term of imprisonment shall commence at the expiration of the term for which he shall have been sentenced for the original offense.

Costs, How Paid.

4842. SEC. 4. The expenses and costs of prosecuting any person or persons for escaping from, or breaking out of, the state prison, or attempting so to do, or

for the commission of any crime while a prisoner therein, shall be a state charge, and shall be paid as other expenses of the state prison.

Punished for Murder, When.

4843. SEC. 5. If one or more persons, lawfully imprisoned in the state prison, shall, separately or together, escape, or shall, separately or together, attempt to escape from such prison; and being so engaged, he, they, or either of them, shall cause the death of any human being in making, or attempting to make, such escape, the prisoner or prisoners causing such death shall be deemed guilty of murder in the first degree, and, on conviction thereof, shall suffer death.

Tried Pending Term of Imprisonment.

4844. SEC. 6. Where any person or persons, under sentence of imprisonment not expired, shall commit any crime or offense against the law, he or they may be tried pending his or their term of imprisonment, and, upon conviction, the judgment of the court shall be rendered for the sentence to commence upon the expiration of the former sentence, if the punishment be one of imprisonment; but if the punishment be of death, the sentence shall be executed without reference to the unexpired term of imprisonment.

An Act concerning marriages.

Approved March 1, 1881, 107.

License Required.

4845. SECTION 1. It shall be unlawful for any Judge of a district court in his district, or Justice of the Peace in his county, or minister of any religious society or congregation, within this state, to join together as husband and wife, persons not allowed by law to be joined in marriage, until the persons proposing such marriage shall exhibit to him a license from the County Clerk as now provided by law.

Misdemeanor to Marry Without License.

4846. SEC. 2. Any Judge of a district court, or Justice of the Peace, or minister violating the provisions of section one of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

An Act to prevent cruelty to women in the State of Nevada.

Approved February 21, 1877, 82.

Post to Be Erected.

4847. SECTION 1. It shall be the duty of the Board of County Commissioners in each county in this state, to cause to be erected in some public locality at the county seat of the respective counties in this state, a substantial wooden post or stone pillar, the same having the dimensions of eight inches in diameter, and a vertical height of five feet above the ground surface; *provided*, that such post or pillar shall not be placed where it may interfere with the free passage of vehicles or of pedestrians along any of the streets or sidewalks in said county seat.

Penalty for Beating a Woman—Placard.

4848. SEC. 2. Any male person in this state who is more than eighteen years of age, who shall willfully and violently strike, beat, or torture the body of any maiden or woman who is more than sixteen years of age, shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, shall be sentenced to be firmly tied or lashed in a standing posture to the post or pillar described in section one of this Act, and shall be kept in such tied and standing posture for a period not less than two hours nor more than ten

hours in the daytime of any day except Sunday; and it shall be the duty of the Sheriff, Constable, or other peace officer who shall be detailed to enforce the sentence of the court, to fasten upon the breast garments of the culprit a placard bearing in large Roman characters the words, "Woman beater" or "Wife beater," as the case may be; and it shall also be the duty of such peace officer to see that said placard shall not be removed from the person of the culprit at any time during the hours of his legal confinement to said post or pillar.

Second Offense.

4849. SEC. 3. Any male person in this state who is more than eighteen years of age, who shall a second time commit the offense of woman beating as defined in section two of this Act, shall be deemed guilty of a misdemeanor, and upon conviction by any court of competent jurisdiction, shall be sentenced to imprisonment in the county jail for a term not less than thirty days nor longer than six months.

Penalty for Officer Refusing to Carry Out Act.

4850. SEC. 4. Any Sheriff, Constable, or other peace officer in this state, who shall refuse or neglect to comply with any of the provisions of section two of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be sentenced to pay a fine in any sum not less than fifty dollars nor more than five hundred dollars.

An Act to prohibit marriages and cohabitation of whites with Indians, Chinese, mulattoes, and negroes.

Approved November 28, 1861, 93.

Intermarriage Prohibited.

4851. SECTION 1. If any white man or woman intermarry with any black person, mulatto, Indian, or Chinese, the parties to such marriage shall be deemed guilty of a misdemeanor, and, on conviction thereof, be imprisoned in the state prison for a term not less than one year nor more than two years.

Performing Marriage, When Misdemeanor.

4852. SEC. 2. If any person authorized to perform the marriage ceremony shall unite any such person as mentioned in this Act in marriage, he shall be deemed guilty of a misdemeanor, and, on conviction, be subject to imprisonment in the state prison for a period not less than one year nor more than three years.

Cohabitation With, a Misdemeanor.

4853. SEC. 3. That if any white person shall live and cohabit together with any black person, mulatto, Indian, or Chinese, in a state of fornication, such person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, and not less than one hundred dollars, or be imprisoned in the county jail not less than one nor more than six months, or both such fine and imprisonment, as the court may order.

Fines, How Applied.

4854. SEC. 4. All fines collected under this Act shall be paid into the treasury of the county in which the conviction is had, and set apart for the common school fund of the state.

An Act to prevent slavery or involuntary servitude, unless for the punishment of crime, in the State of Nevada, and to enforce the provisions of section seventeen of article one of the constitution of the State of Nevada.

Approved March 8, 1879, 105.

Preamble.

4855. WHEREAS, All Chinese who come to this coast arrive here under a con-

tract to labor for a term of years, and are bound by such contract, not only by the superstitions of their peculiar religions, but by leaving their blood relations, fathers, mothers, sisters, brothers, or cousins, as hostages in China for the fulfillment of their part of the contract; and, whereas, such slave labor and involuntary servitude is opposed to the genius of our institutions, opposed to the prevailing spirit of the age, as well as to humanity and Christianity, and degrades the dignity of labor, which is the foundation of republican institutions; and, whereas, section seventeen of article one of the constitution of the State of Nevada reads as follows: "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state"; therefore,

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Involuntary Servitude.

4856. SECTION 1. The immigration to this state of all slaves and other people bound by contract to involuntary servitude for a term of years, is hereby prohibited.

Collection of Wages.

4857. SEC. 2. It shall be unlawful for any company, person or persons, to collect the wages or compensation for the labor of the persons described in the first section of this Act.

To Pay Wages, Unlawful.

4858. SEC. 3. It shall be unlawful for any corporation, company, person or persons, to pay to any owner, or agent of the owner of any such persons mentioned in section one of this Act, any wages or compensation for the labor of such slaves, or persons so bound by said contract to involuntary servitude.

Penalty.

4859. SEC. 4. Any violation of any of the provisions of this Act shall be deemed a misdemeanor, and shall be punished by a fine of not less than three hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than three months or more than six months, or by both such fine and imprisonment.

An Act concerning vagrancy and vagrants.

Approved March 5, 1877, 181.

Vagrancy, a Misdemeanor.

4860. SECTION 1. Vagrancy consists of the acts and deeds of commission and omission, coupled with the personal state and condition of a vagrant, and shall be deemed a misdemeanor; and any person convicted thereof shall be punished by imprisonment in the county jail for a term not exceeding ninety days.

Who Are Vagrants--Not to Apply to Indians or Chinamen, When.

4861. SEC. 2. Every idle and dissolute person, without visible or known means of living, who has the physical ability to work, and who does not for the space of ten days make proper inquiry for, and use due diligence to seek employment, nor labor when employment is offered him; also, every idle or dissolute person who roams about the country from place to place without any lawful business; also, every healthy beggar who solicits alms as a business; also, every person who makes a practice of going from house to house begging food, money, or other articles, or seeks admission to such houses upon frivolous pretexts for no other apparent motive than to see who may be therein, or to gain an insight of the premises; also, every idle or dissolute person or associate of known thieves who wanders about the streets at late and unusual hours of the night, or prowls around dark alleys, byways, and other dark or unfrequented places at any hour

of the night, without any legitimate business in so doing; also, every idle or dissolute person who lodges in any barn, shed, shop, outhouse, or place other than that kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; every "check guerrilla," *i. e.*, one who frequents gambling rooms and solicits money or the checks used therein to represent money from the proprietors, bystanders or betters, and who has no other means of living other than the money so obtained, or obtained in a similar manner elsewhere; every lewd and dissolute male person who lives in and about houses of ill-fame; also, every lewd and dissolute female person known as a "street walker," or common prostitute, who shall upon the public streets, or in or about any public place or assemblage, or in any saloon, bar-room, club-room, or any other public or general place of resort for men, or anywhere within the sight or hearing of ladies or children, conduct and behave herself in an immodest, drunken, indecent, profane, or obscene manner, either by actions, language, or improper exposure of her person; every common drunkard who is in the habit of lying around the streets, alleys, sidewalks, saloons, bar-rooms or other public places in a state of gross intoxication; also, every boy or male person under the age of twenty-one years, who habitually remains away from his home or place of residence after the hour of nine (9) o'clock p. m. without some lawful and necessary business, or other imperative duty, or good and sufficient reason or cause for such absence from home after such hour, for his own amusement and pastime, without any legitimate business for so doing, frequents and passes his time in any gambling room, or other place where gambling is conducted, or any billiard room or other place where any such games are played, or any saloon or other place where intoxicating liquor is sold or drank; or who at any hour of the night or day, for his own amusement and pastime, without any legitimate business for so doing, frequents or loafs around any low den, house, or other place of vice, infamy, or immorality, where known thieves and other vicious and infamous persons resort or congregate; or who at any hour of the night, either alone or otherwise, prowls about the streets or town, disturbing the peace and quiet of the neighborhood by loud or unnecessary noise, or committing petty depredations, tricks, or pranks, upon the person or property of other people, or by abusive, obscene, or insulting language, or by any manner of rowdiness whatsoever, disturb and annoy the passersby, any lawful assemblage of persons, or the neighborhood at large, is a vagrant, and guilty of vagrancy, and, upon conviction, may be punished accordingly. The provisions of this Act shall not apply to Indians, nor to Chinese, when such acts of vagrancy are committed around or in their own quarters, or Chinatown, unless complained of by their own countrymen.

Vagrants May Be Employed on Public Works.

4862. SEC. 3. All male persons having the physical ability to work, convicted of vagrancy and imprisoned on judgment therefor, may be required to perform labor on the public works, buildings, grounds, or ways in the county, and the Sheriff or other person or persons having them in charge while performing such labor may, in his discretion, employ any usual, reasonable, humane, and sufficient means to guard against and prevent such prisoner escaping from custody while being so employed.

Credit Given.

4863. SEC. 4. For each and every day's work willingly and faithfully performed by such vagrant, he shall receive credit for two days' time, which shall be by the Sheriff applied upon and deducted from his term of imprisonment.

For Refusal to Work.

4864. SEC. 5. If any imprisoned vagrant convicted under this Act, having the physical ability to work, refuse to work when required so to do, as herein provided, he may, as a punishment, be forced to work by being compelled to "pack sand," or carry other material and weight from place to place, or to per-

form other labor not unreasonable, inhumane, or too burdensome, until he declares himself willing to work, and does work as required; or in lieu thereof he may, in the discretion of the Sheriff, be confined in a cell of the jail and fed upon no other food except bread and water, until he declares himself ready to work, as required herein; but both methods of punishment herein prescribed shall in no instance be inflicted at the same time. In either case of punishment the prisoner shall have no credit given him upon his term of imprisonment, for such forced labor or solitary confinement.

May Procure Employment For.

4865. SEC. 6. It shall be the duty of the Sheriff, during fair and reasonable weather, when the same can be done without extra expense to the county, to procure employment for and set at work such convicted vagrants, who are serving out their term of imprisonment; and to this end, upon application of any Road Supervisor, Superintendent, foreman, or other overseer or custodian of any public works, buildings, or grounds, he may deliver into the custody and charge of such person making the application, such prisoners, to do labor as herein required, who, after working hours of the day, or after suspension of labor from any cause, shall be returned into the custody of the Sheriff of the county for safe keeping until again required for labor.

Fees of District Attorney.

4866. SEC. 7. For each and every legal conviction under this Act the District Attorney shall be entitled to receive the sum of ten dollars from the county; but the person or persons having such vagrants in charge during such labor shall receive no extra compensation for such charge over and above their regular salary, or wages which they are by law entitled to receive.

Repeal.

4867. SEC. 8. The Act entitled "An Act concerning vagrants and vagrancy," approved March seventh, eighteen hundred and seventy-three [p. 189], and all other Acts and parts of Acts in conflict with this Act, are hereby repealed.

An Act for the more effectual prevention of cruelty to animals.

Approved March 7, 1873, 141.

Society for Prevention of Cruelty.

4868. SECTION 1. Any three or more citizens of the State of Nevada, who shall incorporate as a body corporate under the general laws for incorporations in this state, for the purpose of preventing cruelty to animals, may avail themselves of the privileges and benefits of this Act; *provided*, that the corporate body first forming as aforesaid in any county shall be the only one so entitled to the benefits and privileges of this Act in said county.

By-Laws of Society.

4869. SEC. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for all meetings, and assistant and district or local officers; providing, also, for means and systems for the effectual attainments of the objects contemplated by this Act, for the regulation and management of its business affairs, and for the effectual working of the societies; prescribing, also, the duties of all their officers, for the outlay of all moneys, and the auditing of all accounts; *provided*, that such by-laws shall not in any wise conflict with the laws of the State of Nevada or of the United States, or any provision of this Act.

Officers—Reports.

4870. SEC. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws. They shall make such reports of elections as is by law required of all corporations, and shall, in addition, report to the legisla-

ture of the State of Nevada, at each of its regular sessions, a full account of all their acts.

Peace Officers May Arrest.

4871. SEC. 4. All Sheriffs, Constables, police, and peace officers are empowered to make arrests for the violation of any of the provisions of this Act, and are hereby also empowered to make arrest without warrant, for the violation of any provision of this Act which by this Act is denominated a misdemeanor, when said misdemeanor is committed in the presence of said officers.

Arrests, Whom May Make—Society Badge—Resistance.

4872. SEC. 5. All members and agents, and all local and district officers of each or any of the societies so incorporating, as shall by the Trustees of said societies be duly authorized in writing, approved by the County Judge of the county, and sworn in the same manner as are Constables and peace officers, may make arrests for the violation of the provisions of this Act in the same manner as is provided herein for other officers; *provided*, that all such members shall, when making such arrests, exhibit and expose a suitable badge, to be adopted by said society. All persons resisting said specially appointed officers, as such, shall be punished for said resistance in the same manner as is provided for the punishment of resistance to other officers.

What Considered Cruelty—Property May Be Seized—Maimed Animal Not to Run at Large.

4873. SEC. 6. Every person who shall overdrive, overload, torture, torment, or deprive of sufficient and necessary sustenance, or unmercifully or cruelly beat or mutilate any living creature, shall, on conviction, be deemed guilty of a misdemeanor. Every person who shall, by his act or neglect, maliciously maim, wound, injure, torture, or cruelly beat any animal belonging to himself or to another, shall, on conviction, be deemed guilty of a misdemeanor. Any person who shall cause any animal, bull, bear, dog, cock, or other creature to fight, worry, or injure each other, or any person who shall permit the same to be done on premises under his charge or control, and any person who shall aid, abet, or be present at such fighting and worrying of such animals as a spectator for an admission fee, shall, on conviction, be deemed guilty of a misdemeanor; *provided*, that this shall not apply to officers of said society, peace, or police officers, or to witnesses authorized by the Board of Trustees of said society to be present at such fight for the purpose of giving evidence before the Police Judge, magistrate, or the grand jury of the county in which the offense was committed. Every person who, carrying or transporting, or causing to be carried or transported on any vehicle, railroad car, steamer, or sailing vessel, any living creature, shall unnecessarily torture, injure, torment, beat, wound, or deprive of necessary sustenance, or cause unnecessary pain to them, or any person who shall pluck the feathers from any living fowl or bird, geese and tame ducks excepted, shall, on conviction, be deemed guilty of a misdemeanor; and whenever such person shall be taken into custody, or placed under arrest, by any officer or person authorized to take into custody and to arrest for said unlawful acts, such person so arresting may take charge of the vehicle and its contents, in which such unlawful carrying is committed, and keep the same in some safe place, to be by the owner or person controlling said vehicle designated, or if such place be not designated, then to deliver the same into the custody of the Sheriff or Constable; to be safely kept until such person so arrested, shall be admitted to bail or shall claim the same, when it shall be delivered to the owner, or person entitled to the possession thereof, upon the payment of all charges of detention and keeping. Every owner, driver, or possessor of any maimed or diseased horse, mule, ox, or cow, or other domestic animal, who shall permit the same to go loose in any street, alley, or vacant lot of any town or city for more than three hours after knowledge thereof, shall, on conviction, be deemed guilty of a misdemeanor; *provided*, this shall not apply to owner keeping such animal, belonging to him, on his own premises, with proper care. Every

sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open space in any city or town, may, after due search by a peace officer of said society, and no owner can be found therefor, be destroyed by such officer, and it shall be the duty of all police and peace officers to cause the same to be done on information of such fact of abandonment of such creatures.

Punishment.

4874. SEC. 7. Every person convicted of any misdemeanor under this Act shall be punished as is by law provided for the punishment of misdemeanors.

Prosecutions.

4875. SEC. 8. All prosecutions for violation of any of the provisions of this Act shall be conducted and prosecuted in a court of competent jurisdiction; and any member of said societies, authorized as is provided in section five of this Act, may appear and prosecute in any of said courts, for any violation of the provisions of this Act, whether or not he be an attorney and counselor at law; *provided*, that all such prosecutions shall be conducted in the name of the people of the State of Nevada.

Judgment Upon Conviction.

4876. SEC. 9. In all prosecutions for the violation of any of the provisions of this Act, the court shall, if the defendant be found guilty, direct the Clerk to enter, if it be a court of record, and if not, the Judge of said court shall enter upon the docket or judgment record of said court, the fact that the defendant was convicted for a violation of some provision of this Act; and the Judge or court shall direct that the whole of the fine, which may be paid as a penalty for such violation, to be paid to the President, Secretary, or Treasurer of any society in said county organized and incorporated as herein provided. And such Judge of such court, Justice, or Clerk of the Court, if it be a court of record, shall annually report, on the first Monday in September; the amount of money so paid to said society, in a report to be transmitted to the Board of Supervisors of said county; and each of said Boards of Supervisors shall make a report, on the first Monday of November of each year, to the Controller of the state, of all such sums of money so paid to said society, and said Controller shall report the sum total of said sums to the legislature at each of its regular sessions.

Not to Interfere.

4877. SEC. 10. No part of this Act shall be deemed to interfere with any of the laws of this state known as the game laws, or any laws for the destruction of certain birds; nor shall this Act be deemed to interfere with the right to destroy any venomous reptiles or animals, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals and fowls used for food; nor shall this Act be deemed to interfere with any scientific or physiological experiments conducted or prosecuted for the advancement of science or medicine.

An Act to punish false pretenses in obtaining certificates of registration of cattle and other animals.

Approved March 3, 1887, 105.

Punishment.

4878. SECTION 1. Every person who, by any false pretense, shall obtain from any club, association, society or company, for improving the breeds of cattle, horses, sheep, swine, fowl or other domestic animals, a certificate of registration of any animal in the herd register, or other register of any such club, association, society or company, or a transfer of such registration, upon conviction thereof shall be punished by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November twenty-sixth, eighteen hundred and sixty-one, and Acts amendatory thereto and supplemental thereto.

Approved February 23, 1881, 45.

Taking Domestic Animals.

4879. SECTION 1. Every person who shall feloniously steal, take, and carry away, lead, drive, or entice away any horse, mare, gelding, colt, cow, bull, steer, calf, mule, jack, or jenny, the property of another, shall be deemed guilty of grand larceny, and upon conviction shall be punished by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

An Act to punish the willful and fraudulent killing of stock running at large, and the selling or buying any hide, or carcass, or animal, the brand on which has been cut out or obliterated.

Approved February 15, 1877, 76.

Punishment.

4880. SECTION 1. Any person who, with intent to defraud, shall willfully kill any animal running at large not his own, shall be guilty of felony, and on conviction shall be fined not more than one thousand dollars, or imprisoned in the state prison not more than five years nor less than one year.

Felony.

4881. SEC. 2. Any person who shall sell or purchase, with intent to defraud, the hide or carcass of any animal the brand or mark on which has been cut out or obliterated, shall be guilty of felony, and on conviction shall be fined not more than one thousand dollars, or imprisoned in the state prison not more than five nor less than one year.

An Act requiring persons slaughtering horned cattle to keep the hides and ears ten days, and punishing a failure so to do.

Approved February 12, 1877, 72.

Hides Preserved.

4882. SECTION 1. Any person slaughtering any horned cattle shall keep, for the period of ten days, in some place where the same may be seen, the hide intact, with the ears on, and shall, on demand of any person or persons, be required to produce said hide, with the said ears on, for the said period of ten days.

Penalty.

4883. SEC. 2. Any person violating the provisions of this Act shall be guilty of a misdemeanor, and on conviction shall be fined not exceeding five hundred dollars, or imprisoned in the county jail for a period not more than six months.

An Act to prevent the driving of stock from their ranges.

Approved November 21, 1861, 32.

Not Driven Without Owner's Consent.

4884. SECTION 1. That no person shall be permitted to lead, drive, or in any manner remove, any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained; provided, the owner of any such animals, as aforesaid, finding the same running on the herd grounds or commons, with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient cor-

ral, or other place for separating his own from other animals, if he, in such case, immediately, with all convenient speed, drive all such animals, not belonging to himself, back to the herd ground from which he brought such animals.

Penalty for Driving.

4885. SEC. 2. Any person violating the provisions of the foregoing section, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same.

An Act to prohibit and punish the killing or branding of stock running at large by persons not owning the same.

Approved March 8, 1879, 109.

Branding Property of Another.

4886. SECTION 1. If any person who, with the intent to defraud or appropriate to his own use the horse, mule, jack, jenny, ox, cow, calf, sheep, hog, or other stock of another, shall willfully miswork or misbrand any stock not his own, or kill any stock running at large, whether branded, marked, or not, shall, on conviction thereof, be deemed guilty of felony, and shall be punished by imprisonment in the state prison for a term not less than six months nor more than five years.

An Act to prohibit the unauthorized use of horses, mules or work cattle.

Approved March 6, 1879, 71.

Penalties.

4887. SECTION 1. If any person shall use or work any horse or horses, mule or mules, or work cattle without first obtaining the consent of the owner thereof, he shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars or more than three hundred dollars, or by imprisonment in the county jail for not less than fifty days or more than three hundred days.

Distribution of Fines.

4888. SEC. 2. All fines collected under the provisions of this Act shall be paid into the treasury of the county in which the conviction is had, for the benefit of the state school fund.

An Act to provide for the punishment of persons for altering the marks and brands upon live stock.

Approved March 14, 1891, 51.

Penalty.

4889. SECTION 1. Each and every person who shall mark or brand, alter or deface, or cause to be marked or branded, altered or defaced, the mark or brand of any horse, colt, mare, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat, or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the state prison for a term of not less than one year nor more than five years.

An Act concerning certain crimes and punishments.

Approved March 16, 1899, 122.

Seller of Slaughtered Animals to Exhibit the Hide With Brand.

4890. SECTION 1. It shall be unlawful for any person to sell any slaughtered

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An Act requiring persons slaughtering horned cattle to keep the hides and ears ten days, and punishing a failure so to do.

Approved February 12, 1877, 72.

Hides Preserved.

4882. SECTION 1. Any person slaughtering any horned cattle shall keep, for the period of ten days, in some place where the same may be seen, the hide intact, with the ears on, and shall, on demand of any person or persons, be required to produce said hide, with the said ears on, for the said period of ten days.

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ral, or other place for separating his own from other animals, if he, in such case, immediately, with all convenient speed, drive all such animals, not belonging to himself, back to the herd ground from which he brought such animals.

Penalty for Driving.

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An Act to provide for the punishment of persons for altering the marks and brands upon live stock.

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An Act concerning certain crimes and punishments.

Approved March 16, 1890, 122.

Seller of Slaughtered Animals to Exhibit the Hide With Brand.

4890. SECTION 1. It shall be unlawful for any person to sell any slaughtered

bovine animal to the keeper of any butcher shop or meat market in this state, without having, and upon request exhibiting, to such keeper, the hide containing the brand, and other marks upon the hide of such animal. Any person so offending shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days, nor more than two hundred and fifty days, or by both such fine and imprisonment.

Duties of Purchasers.

4891. SEC. 2. It shall be unlawful for the keeper of any slaughter house, or persons engaged in slaughtering cattle for sale in this state, to purchase any cattle for slaughter, or any slaughtered bovine animal, without having exhibited to him the hide of such animal, and examining the brand and other marks upon such hide, and making and entering in a book kept for that purpose a description of such brand and marks, together with the name of the person from whom the purchase was made and the date of such purchase. Said book shall be kept at the slaughter house or business office of the person engaged in slaughtering cattle, and shall be open to the inspection of the Hide Inspector or the owner of any cattle in this state during business hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than two hundred and fifty days, or by both such fine and imprisonment.

Must Preserve Hide and Brand.

4892. SEC. 3. It shall be unlawful for any person peddling the meat of any bovine animal, who is not the keeper of any shop or meat market, to sell such meat without having in his possession, then and there, and upon request exhibiting, the hide of such animal containing the brand and other marks thereon. Any person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars, or imprisonment in the county jail not less than thirty days nor more than two hundred and fifty days, or by both such fine and imprisonment.

Keeper of Slaughter House Must Keep a Book of Record.

4893. SEC. 4. It shall be the duty of every keeper of any slaughter house, and engaged in the business of slaughtering any bovine animals, to keep at his slaughter house, or place of business, a book of record, in which shall be recorded and preserved a description of the brand and other marks upon the hides of each slaughtered bovine animal, together with the name of the person from whom the animal was purchased, when such name is known and can be ascertained, and the date of such purchase. Said book shall be open to the inspection of the Hide Inspector or the owner of any cattle during business hours. Any person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars, nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than two hundred and fifty days, or by both such fine and imprisonment.

Repeal.

4894. SEC. 5. The Act of the legislature of the State of Nevada, entitled "An Act concerning certain crimes and punishments," approved February 27, 1885 [p. 42], is hereby repealed.

An Act to prohibit the shearing of sheep within the limits of any city or town in this state.

Approved March 6, 1889, 72.

Prohibited at All Seasons.

4895. SECTION 1. It shall be unlawful for any sheep to be penned, housed or

fed for the purpose of being sheared, or to be sheared, within the ordinary limits of any city or town of this state during any period of the year. This shall not apply to any place not within one-half mile of a residence.

Penalty.

4896. SEC. 2. Any person or persons, corporation, agent or agents, being owner of or having control or charge of any sheep, who shall willfully violate any of the provisions of this Act, such person or persons shall be guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine not exceeding one hundred dollars or imprisonment not exceeding fifty days, or by both such fine and imprisonment, as the court may impose.

An Act to prevent the adulteration of milk; and to prevent traffic in impure and unwholesome milk.

Approved February 17, 1879, '36.

Penalties for Selling Impure Milk.

4897. SECTION 1. Any person or persons who shall knowingly sell or exchange, or expose for sale or exchange, any impure, adulterated or unwholesome milk, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars for each and every offense; and if the fine is not paid, then said person or persons so convicted shall be imprisoned, in the county jail, for not less than thirty days.

Persons Liable.

4898. SEC. 2. Any person or persons who shall adulterate milk, with the view of offering the same for sale or exchange, or shall keep cows for the production of milk for market, or for sale or exchange, in a crowded or unhealthy condition, or feed the same on food that produces impure, diseased or unwholesome milk, or who shall sell or exchange or offer to sell or exchange any milk as pure, from which the cream or any portion thereof has been taken, except as hereinafter provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars for each and every offense; and if the fine is not paid, the person or persons so convicted shall be imprisoned, in the county jail, for not less than thirty days.

Adulterations, What Are.

4899. SEC. 3. The addition of water or any substance is hereby declared an adulteration; any milk that is obtained from animals that are fed on distillery, brewery, hotel, or restaurant waste, usually called "swill," or upon any substance in a state of putrefaction, or upon impure matter from stalls and stables, is hereby declared to be impure and unwholesome, and any person or persons offending, as aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars for each and every offense; and if the fine is not paid, the person or persons so convicted shall be imprisoned, in the county jail, for not less than thirty days.

Exceptions.

4900. SEC. 4. Nothing in this Act shall be construed to prevent the sale of skimmed milk, provided the person or persons selling the same shall first make known the fact that it is skimmed milk, and shall sell it as such; and any person or persons who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be subject to the penalties prescribed in section two of this Act.

Penalties, How Recoverable.

4901. SEC. 5. The penalties hereinbefore provided shall be recoverable before any court having jurisdiction of the same; one-half of such fine shall be paid to

the person or persons who shall make the complaint and prosecute the same, and the other half shall be paid into the school fund.

An Act supplemental to an Act entitled "An Act to prevent the adulteration of milk, and prevent traffic in impure and unwholesome milk," approved February seventh, eighteen hundred and seventy-nine.

Approved February 26, 1881, 79.

Milk Inspector.

4902. SECTION 1. There shall be appointed by the Board of County Commissioners of said county a Milk Inspector, whose duties shall be as provided in section two of this Act.

Duty Of.

4903. SEC. 2. It shall be the duty of said Milk Inspector to inspect milk offered for sale by vendors in his county, and if found adulterated, unwholesome and impure, he shall cause the arrest of said vendor or vendors, and prosecute them in any court of competent jurisdiction in this state.

Fines.

4904. SEC. 3. If said vendor or vendors are found guilty of the violation of this Act, and the Act to which this is supplemental, they shall be fined in any sum not less than twenty-five dollars, nor more than two hundred dollars, or be imprisoned in the county jail for not less than fifty nor more than one hundred days. All fines under the provisions of this Act to be paid into the school fund.

Compensation.

4905. SEC. 4. The compensation for said Milk Inspector's services shall be regulated and ordered paid by the Board of County Commissioners of his county.

An Act to punish and prevent deception in the manufacture and sale of butter.

Approved February 4, 1881, 24.

Duties of Manufacturers.

4906. SECTION 1. Every person who shall manufacture for sale any article or substance in semblance of butter, that is not the legitimate product of the dairy, and not made exclusively of milk or cream, but into which the oil or fat of animals, not produced from milk, enters as a component part, or into which melted butter, or any oil thereof has been introduced, to take the place of cream, unless the package containing such article or substance shall be labeled or branded with the word "oleomargarine," as provided in section two of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not exceeding five hundred dollars, and shall be confined in the county jail not less than thirty days nor more than six months.

Substitute for Butter Stamped or Branded.

4907. SEC. 2. Every person who shall sell, or offer, or expose for sale, or have in his or her possession with intent to sell any of the said article or substance mentioned in section one of this Act, shall distinctly mark, brand or label every package containing such substance, whether at wholesale or retail, with the word "oleomargarine," and every person who shall sell, or offer for sale, such substance not so branded, marked, or labeled, shall be guilty of a misdemeanor, and, upon conviction therefor, in any court in this state having cognizance thereof, shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense.

Letters for Brands.

4908. SEC. 3. The branding or marking spoken of in this Act, if on rolls or

prints, shall be in letters not less than one-fourth of an inch square, and if on tubs or other packages, the letters shall not be less than one-half inch square.

An Act defining misdemeanors in certain cases and prescribing penalties therefor.

Approved March 4, 1875, 127.

Defacement or Obstruction.

4909. SECTION 1. Any person who shall willfully deface, break down, or destroy any fence upon or surrounding the state capitol grounds of this state, or who shall erect any bulletin board, or other advertising device, or deposit any garbage, cord-wood, empty boxes, or other debris or obstruction, within twenty feet of said fence, or who shall injure, break down, or destroy any tree, shrub, or other thing upon said grounds, belonging to the state, shall be deemed guilty of a misdemeanor, and, upon due conviction thereof, shall be punished by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court; *provided*, that the provisions of this Act shall not apply to the Commissioners authorized by law to improve the grounds surrounding the capitol building.

An Act to prevent persons from passing through inclosures and leaving them open, by tearing down fences, or otherwise, and domestic animals from being shot by persons while hunting on inclosed premises, and providing for the payment for such injuries so done.

Approved February 19, 1879, 41.

Neglect to Close Gate.

4910. SECTION 1. Every person who shall open any gate, bars or fence, for the purpose of passing through, and shall willfully or negligently leave the same open, without permission of the owner, shall be guilty of a misdemeanor.

Tearing Down Fence.

4911. SEC. 2. Every person who willfully tears down, or otherwise destroys any fence, on any inclosed land of another, is guilty of a misdemeanor.

Neglect of Fires.

4912. SEC. 3. Every person who, upon departing from camp, willfully or negligently leaves the fire or fires burning or unexhausted, is guilty of a misdemeanor.

Penalties.

4913. SEC. 4. Every person found guilty of any of the misdemeanors herein mentioned shall be found guilty of a misdemeanor, and shall be fined not less than fifty dollars, nor more than one hundred dollars, and shall be imprisoned in the county jail until such fine is satisfied, not exceeding one day for each two dollars thereof.

Judgments.

4914. SEC. 5. Nothing contained in this Act shall be so construed as to prevent the party suffering damage from obtaining a judgment against the party or parties so injuring or damaging, in any court of competent jurisdiction, as in all civil cases under the Practice Act of the State of Nevada.

An Act requiring the shutting and fastening of gates opened for the purpose of passing through or into inclosed fields, or partly inclosed lands, and regulating penalties for violating the provisions of this Act.

Approved March 13, 1891, 36.

Penalty for Not Closing Gates.

4915. SECTION 1. Any person or persons opening and passing through gates

when said gates are placed in fences inclosing fields, or in fences partly inclosing lands and not shutting and fastening the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty dollars, nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than ten days, nor more than fifty days, or by both such fine and imprisonment; *provided*, that the provisions of this Act shall not apply to gates in towns and cities nor gates necessary in the approach to any building or works where the passing through or into fields or lands is not contemplated.

An Act to prohibit animals from being ridden or driven over any toll or county bridge in this state, faster than a walk.

Approved February 23, 1877, 90.

Penalty—Notice.

4916. SECTION 1. That any person or persons riding or driving any animal or animals upon any toll or county bridge in this state faster than a walk, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; *provided*, that the County Commissioners, or owners of toll roads, shall cause to be placed in a conspicuous place at or near the end of such bridge, a notice warning all persons not to ride or drive animals upon such bridge faster than a walk.

An Act to prevent the owners, superintendents or managing agents of any water ditches, flumes or artificial watercourses, to allow the water from the same to run into or upon any public road, highway, street or alley in this state.

Approved March 6, 1880, 74.

Misdemeanor.

4917. SECTION 1. If any person or persons being the owner or owners, superintendent or managing agent of any water ditch, flume or artificial watercourse, within this state, shall willfully, maliciously, negligently or carelessly allow or let the water from the said ditch, flume or artificial watercourse run or flow into or upon any public road, highway or common street or alley of any city, town or village within this state, so as to make the said public road, highway, street or alley impassable or inconvenient to travel, every person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars.

Road Supervisor to Notify.

4918. SEC. 2. Whenever the water from any ditch, flume or artificial watercourse in this state shall run or flow into or upon any public road, highway, street or alley of any city, town or village of this state, and the Road Supervisor within whose road district said public road, highway, street or alley is situated, and in case there is no Road Supervisor, then any member of the Board of County Commissioners of the county within which said public road, highway, street or alley is situated, shall notify the said owner or owners, superintendent or managing agent of said ditch, flume or artificial course, that the water from the same is or has been flowing into or upon said public road, highway, street or alley, making the same impassable or inconvenient to travel or pass, and in case the said owner or owners, or superintendent or managing agent of said ditch, flume or artificial watercourse refuse or neglects for five days to repair the same and prevent the water from flowing into or upon said public road, highway, street or alley, it shall be prima facie evidence of negligence.

An Act to protect and to encourage the construction of sidewalks in the towns and villages of this state.

Approved February 12, 1885, 25.

Riding or Driving on Sidewalks.

4919. SECTION 1. Any owner or occupant of land may construct and maintain a sidewalk in the highway along the line of his land, subject, however, to the authority conferred by law on the Boards of County Commissioners and Road Supervisors; and sidewalks already constructed and laid out, being of reasonable limits as to width, and so as not to operate as an obstruction to the street or highway, shall be maintained and protected under this Act, and any person who shall willfully and intentionally ride or drive, or cause to be ridden or driven, any animal, vehicle or other thing over or upon such sidewalk, without permission of the owner or occupant, shall be deemed guilty of a misdemeanor, and upon conviction thereof, fined in any sum not exceeding twenty dollars, in addition to costs of prosecution.

An Act to prevent the keeping of disorderly houses or inns.

Approved February 14, 1879, 35.

Misdemeanor.

4920. SECTION 1. Any person in this state who shall keep any disorderly house, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood, or of any family thereof, is habitually disturbed, or who shall keep any inn in a disorderly manner, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

An Act to require licenses to be posted up.

Approved February 9, 1883, 34.

To Be Posted, Where.

4921. SECTION 1. Every person required by the laws of this state to obtain a license for the transaction of any kind of business in any fixed or certain locality therein, shall post such license conspicuously in his establishment or place of business, and keep the same so conspicuously posted until such license has expired, or he ceases to transact such business.

Misdemeanor.

4922. SEC. 2. Any person who shall fail to post or keep posted a license as required by section one of this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one hundred dollars.

An Act to prohibit cheating and unlawful games.

Approved February 2, 1875, 50.

Three-Card Monte, Strap Game, etc.

4923. SECTION 1. It shall be unlawful in this state for any person to deal, play, carry on, open, or cause to be opened, or in any manner whatsoever assist in or about the playing of the game commonly known as the strap game; the game sometimes known as the California dice game, sometimes as twenty-one, and sometimes as top and bottom; or the game known as three-card monte, or any similar game with any number of cards. Any person who shall deal, play, or carry on, open, or cause to be opened, or who shall in any manner whatever assist in or about the playing of any of the games aforesaid; or any similar games, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished

by imprisonment in the state prison for a term of not less than two nor more than five years.

Violation a Felony.

4924. SEC. 2. Every person who shall solicit or request, or in any manner whatever attempt to lead, induce, or prevail upon any other person to play, bet, or in any manner whatever hazard any money, chose in action, credit, or any valuable thing, at any of the games enumerated in section one of this Act, or at any of the banking games enumerated in section one of an Act entitled "An Act to restrict gaming," passed March fourth, A. D. eighteen hundred and sixty-nine, or any banking game played with cards, dice, or any other device, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a term not less than one nor more than two years.

Cheating, etc., a Felony.

4925. SEC. 3. Every person who shall deal, play, open, or cause to be opened, or carry on any game played with cards, dice, or any other device, commonly known and designated as a hogging game, or who by any fraud, cheat, deceitful device, or false pretense or pretenses, or by any kind of false representation whatsoever, while playing at or dealing any of the games referred to in the preceding section, or while having any share in wagers played for at such games, or while betting on sides or hands of such play, wins or acquires to himself or another any sum of money, chose in action, or valuable thing, or the possession thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be sentenced to restore such money, chose in action, or valuable thing, so won or acquired, to the owner thereof, and shall be imprisoned in the state prison for a term of one year.

Agent of Common Carrier May Arrest.

4926. SEC. 4. It shall be lawful for any agent, officer, or employee of any common or passenger carrier in this state to arrest and confine and restrain, without warrant, any person who shall violate any of the provisions of this Act while being carried as a passenger in any car, coach, or other vehicle of such common or passenger carrier; *provided*, any agent, officer, or employee of such carrier who shall arrest any such person under the provisions of this section, shall, with all convenient speed, deliver such person into the custody of some magistrate or peace officer of this state, and shall forthwith enter a complaint against the person so arrested, before the nearest or most accessible magistrate.

Venue of Offense.

4927. SEC. 5. Any person committing any offense under the provisions of this Act on any car, coach, or other vehicle belonging to any common or passenger carrier in this state, may be indicted and tried for such offense in any county in this state through or in which the track or route of such carrier runs or lies.

Guilty of Felony.

4928. SEC. 6. Every person who shall knowingly permit any of the games mentioned and alluded to in section one of this Act to be dealt, played, opened, or caused to be opened, or in any manner whatever carried on in any house, building, car, coach, or other vehicle owned by such person, in whole or in part, or any agent, employee, or officer of any common or passenger carrier in this state, who shall knowingly permit any of the said games to be dealt, played, opened, or carried on in any building, car, coach, or other vehicle which may for the time being be in the charge, care, or custody of such agent, employee, or officer, shall be deemed guilty of a felony, and upon conviction shall be imprisoned in the state prison for a term of one year.

District Attorney to Prosecute.

4929. SEC. 7. Every District Attorney and peace officer within this state shall inform against and diligently prosecute all persons violating any of the

provisions of this Act; and every such District Attorney and officer who shall knowingly neglect or refuse so to do, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in any sum not less than five hundred nor more than fifteen hundred dollars; which fine may be collected in an action instituted by the Attorney-General, on behalf of the state, against the sureties on the official bond of such District Attorney or peace officer.

Grand Juries.

4980. SEC. 8. It shall be the duty of Judges of the District Courts of the several judicial districts in this state, to specially give this Act in charge of every grand jury impaneled in their respective districts.

An Act to prohibit the winning of money from persons who have no right to gamble it away.

Approved March 5, 1877, 173.

Forbidden to Gamble.

4931. SECTION 1. No person who has a wife, minor child, or minor children dependent in whole or in part upon his earnings for support, and to whom (with himself) all such earnings are necessary for their proper and comfortable maintenance, shall be deemed to have the right to squander any portion thereof in gambling. No person who is justly and legally indebted to another for board, clothing, goods, wares, merchandise, labor, medical attendance, or otherwise, and who is not lawfully seized of sufficient real or personal property liable to levy and sale under execution to satisfy such indebtedness, shall be deemed to have the right to squander his earnings or money in gambling so long as such lawful and just debt remains unpaid.

Notice to Owner of Game.

4932. SEC. 2. If any person having such dependent family or unpaid creditor as mentioned in section one of this Act, be in the habit or practice of squandering his money in gambling, it shall be the right of such family, or of such unpaid lawful creditor, or of any friend or friends of the same, to give, or cause to be given, written notice thereof to the proprietor, keeper, dealer in, or other person in charge of, or usually in attendance and employed at any place or places where gambling is carried on or practiced, stating in such notice all the necessary facts pertaining to his case, and requesting that no person connected with or frequenting the place be allowed to win or take his money.

To Take Money a Misdemeanor, When—Proviso.

4933. SEC. 3. Every person who shall win or take from, or who shall assist or be interested, either as dealer, player, proprietor, principal, agent, or otherwise, in winning or taking from such head of a dependent family, or such poor debtor as is described in section one of this Act, any money, promissory note, due bill, or other evidence of indebtedness, or other valuable thing, at any gambling game, betting game, or game of chance or skill, shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not less than two hundred and fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not less than three months nor more than six months, or by both such fine and imprisonment, in the discretion of the court; *provided*, that no conviction shall be had for a violation of the provisions of this Act unless it be shown upon the trial that the defendant, or some one connected with the game or gambling place where such winning was made, as proprietor, dealer, player, keeper, or some other person usually in attendance and employed or interested therein had, previous to such winning, been notified or informed, in writing, that the individual (his identity being known or made known) from whom the money or other valuable thing had been won or taken, was either the head of a dependent family or poor debtor in the condition described in section

one of this Act; and, if such poor debtor, that said notice or information contained also a statement of the name of at least one of the parties to whom he was indebted, with the amount, or about the amount, due the same; and, in such last mentioned case, it shall also be shown upon the trial that at the time of the winning complained of, such indebtedness, or some portion thereof, remained unpaid. No other proof of notice to or knowledge by the defendant shall be required than that stated in this proviso.

Licenses.

4934. SEC. 4. All licenses for gaming or gambling hereafter granted shall be deemed to be subject to the provisions of this Act.

Fines.

4935. SEC. 5. All fines collected under this Act shall be paid into and belong to the county poor fund.

List to Be Kept.

4936. SEC. 6. It shall be the duty of all county, town or municipal officers, who grant or collect licenses for gaming or gambling, to keep in their respective offices a list of all places where gaming or gambling is licensed to be carried on, which list shall at all reasonable hours be open to the inspection of any sober person not under twenty-one years of age.

An Act to prohibit lotteries.

Approved March 7, 1873, 186.

Lotteries Defined.

4937. SECTION 1. A lottery is any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share or any interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name the same may be known.

Drawing Of.

4938. SEC. 2. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Selling of Tickets, Misdemeanor.

4939. SEC. 3. Every person who sells, gives or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

Aiding Sale of Tickets.

4940. SEC. 4. Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise, in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

Keeping Tickets.

4941. SEC. 5. Every person who opens, sets up, or keeps by himself or by any other person, any office or other place for the sale of or for registering the number of any ticket in any lottery, or who by printing, writing, or otherwise advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

Insuring or Guaranteeing Ticket.

4942. SEC. 6. Every person who insures or receives any consideration for

insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this state or not, or who receives any valuable consideration upon any agreement to repay any sum or deliver the same, or any other property; if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent upon the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

Forfeited to State.

4943. SEC. 7. All moneys and property offered for sale or distribution in violation of any of the provisions of this Act are forfeited to the state, and may be recovered by information filed or by an action brought by the Attorney-General, or by any District Attorney, in the name of the state. Upon the filing of the information or complaint, the Clerk of the Court, or if the suit be in a justice's court, the Justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner as attachments from the district courts in civil cases.

Misdemeanor.

4944. SEC. 8. Every person who lets or permits to be used any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

Fine and Imprisonment.

4945. SEC. 9. Every offense declared to be a misdemeanor by this Act shall be punishable by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for any term not exceeding six months, or by both such fine and imprisonment.

Murphy v. Overton, 16 Nev. 136.

An Act to prevent minors from gambling.

Approved March 2, 1881, 102.

Proprietor of House Liable.

4946. SECTION 1. Any keeper or proprietor of a licensed house where gambling is carried on, who shall permit any minor to be present while gambling is going on, either as a spectator or participant in the game, shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than two hundred (\$200) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for a period of six months, or by both such fine and imprisonment, in the discretion of the court.

Person Gambling With, Liable.

4947. SEC. 2. Any person who shall, knowingly, gamble with any minor or minors, or entice a minor to gamble in any house, dwelling, tenement, shop, office, or in any other place, shall be deemed guilty of a misdemeanor, and punished as provided in section one of this Act.

Disposition of Fines.

4948. SEC. 3. All fines collected, as provided in section one of this Act, shall go into the state school fund; *provided*, that in addition to the fine and all other costs a sum not less than twenty-five (\$25) dollars or more than fifty (\$50) dollars shall be taxed as costs against the defendant, which shall go to the informer.

Jurisdiction.

4949. SEC. 4. Justices of the Peace shall have jurisdiction in these cases.

An Act to prohibit the use of firearms in public places.

Approved January 28, 1881, 19.

Misdemeanor in Certain Cases.

4950. SECTION 1. Any person in this state, whether under the influence of liquor or otherwise, who shall, except in necessary self-defense, maliciously, wantonly or negligently discharge or cause to be discharged any pistol, gun or any other kind of firearm, in or upon any public street or thoroughfare, or in any theater, hall, store, hotel, saloon or any other place of public resort, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail for a term not less than two nor more than six months, or by a fine not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment; *provided*, that no Sheriff, Deputy Sheriff, Marshal, Constable, Deputy Constable or other peace officer shall be held to answer under the provisions of this Act for discharging firearms in the lawful pursuance of his or their duty.

Duties of Officers.

4951. SEC. 2. It shall be the duty of all civil, military and peace officers to be vigilant in carrying the provisions of this Act into full force and effect; and any Sheriff, Deputy Sheriff, Marshal, Constable or Deputy Constable who shall neglect his duty in the due arrest of any offender under the provisions of this Act, shall be deemed guilty of a violation of his or their official oath, and, on conviction, shall be punished by a fine not less than one hundred nor more than one thousand dollars, and by imprisonment in the state prison not less than six months nor more than five years.

An Act to prohibit the carrying of concealed weapons by minors.

Approved March 4, 1881, 143.

Minors Not to Carry Weapons.

4952. SECTION 1. Every person under the age of twenty-one (21) years who shall wear or carry any dirk, pistol, sword in case, slung shot, or other dangerous or deadly weapon concealed upon his person, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than two hundred (\$200) dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment. *As amended, Stats. 1885, 51.*

An Act to regulate houses of prostitution, dance houses, and houses where beer, wine or spirituous liquors are sold.

Approved February 26, 1887, 84.

Houses of Ill-Fame, Location Of.

4953. SECTION 1. It shall be unlawful for any owner, or agent of any owner, or any other person to keep any house of ill-fame, or to let or rent to any person whomsoever, for any length of time whatever, to be kept or used as a house of ill-fame, or resort for the purposes of prostitution, any house, room or structure, situated within four hundred yards of any school house or school room used by any public or common school in the State of Nevada. *As amended, Stats. 1889, 35.*

Property Not to Be Rented for Hurdy House, etc.

4954. SEC. 2. It shall be unlawful for any owner or agent of any owner or any other person to keep, let or rent for any length of time, or at all, any house fronting on the principal business street or thoroughfare of any of the towns of

this state, for the purpose of prostitution or for the purpose of keeping any dance house or house commonly called a hurdy house, or house where wine, beer or spirituous liquors are sold or served by females or female waiters or attendants, or where females are used or employed to attract or solicit custom, nor shall any entrance or exit way to any house referred to in this section be made or used from the principal business street or thoroughfare of any of the towns of this state.

Penalty.

4955. SEC. 3. Any person violating the provisions of sections one or two of this Act shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five dollars nor more than three hundred dollars, or be imprisoned in the county jail not less than five nor more than sixty days, or by both such fine and imprisonment, in the discretion of the court.

SEC. 4 repealed, Stats. 1889, 85.

Competent Evidence.

4956. SEC. 5. In the trial of all cases arising under the provisions of this Act, evidence of general reputation shall be deemed competent evidence as to the question of the ill-fame of any house alleged to be so kept, and to the question of the ill-fame of such woman.

Duty of Officers.

4957. SEC. 6. It shall be the duty of the District Attorney and Sheriff of each county in this state to see that the provisions of this Act are strictly enforced and carried into effect, and upon neglecting so to do they, or either of them, shall be deemed guilty of misdemeanor in office, and may be proceeded against as provided in sections sixty-three to seventy-two, inclusive, of an Act entitled "An Act relating to elections," approved March twelfth, eighteen hundred and seventy-three.

An Act for the better observance of the Lord's day.

Approved November 21, 1861, 39.

Places to Be Closed.

4958. SECTION 1. No person shall keep open any play-house or theater, race-ground, cock-pit, or play at any game of chance for gain, or engage in any noisy amusement, on the first day of the week, commonly called Lord's day.

No Judicial Business—Exceptions.

4959. SEC. 2. No judicial business shall be transacted by any court, except deliberations of a jury who have received a case on a week day, so called, and who may receive further instructions from the court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, nor any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's day; *provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination to be proceeded with.

Penalty.

4960. SEC. 3. Any person or persons violating the provisions of the two preceding sections of this Act shall be punished, on conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars, for each offense.

Jurisdiction.

4961. SEC. 4. Justices of the Peace may have jurisdiction of all complaints arising under the aforesaid Act.

Fines, How Disposed Of.

4962. SEC. 5. On complaint of any person, before a Justice of the Peace, the person or persons found guilty of any offenses specified in this Act shall be fined

as aforesaid, to be paid to the Treasurer of the Territory, for the benefit of common schools; and the offender shall, in addition to the said fine and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of not less than two hundred dollars, nor more than five hundred dollars, for good behavior during any time within the discretion of the court, and stand committed till the whole order is complied with, and the fine be paid.

An Act to prevent the willful injury to, or interference with, railroad property, and to provide for the punishment thereof.

Approved March 19, 1891, 78.

Misdemeanor.

4963. SECTION 1. If any person or persons shall willfully uncouple or detach any locomotive or tender or any car of any railroad train, either when standing or in motion on any track of any railroad, or shall, without authority, take off the brake of any railroad car, tender or train, or shall put in motion any locomotive, tender, car or train without authority, or shall throw any stone, rock, missile or any substance at any railroad train, car, locomotive or tender, or any part of any train, or shall discharge any gun, pistol or any other firearm at any train, car, locomotive or tender, or shall wrongfully injure, deface or damage the same, or any part thereof, or shall aid or abet or procure any of the above mentioned acts to be done or attempted shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding fifty days, or by both such fine and imprisonment for such offense.

An Act to prevent malicious injury to church, school and other buildings and property, and to protect persons from malicious annoyance, and matters properly relating thereto.

Approved March 13, 1895, 63.

Misdemeanor.

4964. SECTION 1. It shall be a misdemeanor for any person or persons to willfully and maliciously injure, mark or deface any church edifice, school house or other building, public or private, its fixtures, books or appurtenances, or to commit any nuisance therein, or to purposely and maliciously commit any trespass upon the grounds attached thereto, or any fixtures placed thereon, or any enclosure or sidewalk about the same, or in any manner to maliciously and purposely interfere with or disturb those peaceably assembled within such building or buildings.

Penalty.

4965. SEC. 2. Any person or persons convicted of a misdemeanor under the foregoing section of this Act shall be subject to a fine, not exceeding two hundred dollars, or imprisonment in the county jail, not to exceed six months, or to both such fine and imprisonment.

An Act to secure protection to school children and to preserve the peace of public schools and matters connected therewith.

Approved March 6, 1893, 106.

Abuse of Pupils or Teachers.

4966. SECTION 1. It shall be a misdemeanor for any person or persons to detain, beat, whip or otherwise interfere with any pupil or pupils attending any public school in the State of Nevada on his, her or their way to or from such school against the will of such pupil or pupils.

Misdemeanor.

4967. SEC. 2. It shall be a misdemeanor for any person or persons to disturb

the peace of any public school in the State of Nevada by using vile or indecent language, or by threatening or assaulting any pupil or teacher within the building or grounds of such school, and for the purposes of this Act the ground of every public school in the State of Nevada shall extend to a distance of fifty yards in all directions from the school building.

Penalty.

4968. SEC. 3. Any person or persons convicted of a misdemeanor under either of the foregoing sections of this Act shall be subject to a fine not exceeding three hundred dollars or imprisonment in the county jail not to exceed six months, or to both such fine and imprisonment.

An Act to prohibit certain advertisements tending to promote licentiousness and crime.

Approved February 13, 1877, 73.

What Prohibited.

4969. SECTION 1. It shall not be lawful for any person to advertise or publish, or cause to be advertised or published in a newspaper, pamphlet, handbill, book, or otherwise, within the State of Nevada, any medicine, nostrum, drug, substance, or device for the prevention of human propagation, or which purports to be, or is represented to be, a preventive of conception or pregnancy in women.

Certain Advertisements Prohibited.

4970. SEC. 2. It shall not be lawful for any person to advertise or publish, or cause to be advertised or published in the manner mentioned in section one, or otherwise, any medicine, nostrum, drug, substance, instrument, or device, to produce the miscarriage or premature delivery of a woman pregnant with child, or which purports to be, or is represented to be, productive of such miscarriage or premature delivery, nor to advertise in any manner his or her services, aid, assistance, or advice, or the services, assistance, or advice of any other person, in the procurement of such miscarriage or premature delivery.

Penalty for Advertiser.

4971. SEC. 3. Every person who shall violate the provisions of section one or section two of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine of not less than one thousand dollars nor more than three thousand dollars, or by imprisonment in the county jail not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

For Publisher.

4972. SEC. 4. The proprietor or proprietors, and the manager or managers of any newspaper, periodical or other printed sheet published or printed within the State of Nevada, which shall contain any advertisement prohibited by sections one and two of this Act, shall, for each publication of such advertisement, be deemed guilty of a misdemeanor, and, on conviction thereof, be punished in the same manner as is provided in section three of this Act.

Circulation Forbidden.

4973. SEC. 5. Every person who shall knowingly sell, distribute, give away, or in any manner dispose of or exhibit to another person any newspaper, pamphlet, book, periodical, handbill, printed slip, or writing, or cause the same to be so sold, distributed, disposed of, or exhibited, containing any advertisement prohibited in sections one or two of this Act, or containing any description or notice of, or reference to, or information concerning, or direction how or where to procure any medicine, drug, nostrum, substance, device, instrument, or service, the advertisement of which is herein prohibited or declared to be unlawful, shall, on conviction thereof, be liable to the same punishment as prescribed in section three of this Act; *provided*, that nothing in this Act shall be construed to interfere

with or apply to legally licensed physicians in the legitimate practice of their profession.

An Act to furnish [punish] the manufacture and use of any dynamite machine or other device for the destruction of life or property.

Approved March 3, 1887, 113.

Dynamite Machine Unlawful.

4974. SECTION 1. It shall be unlawful for any person or persons to manufacture or procure any dynamite machine or device or other device for the destruction of life or property, or to have either of the same in his or their possession any such dynamite machine, device or other device with intent to use the same, or to use or attempt to use the same for the destruction of life or property or shall by the use of either destroy life or property.

Penalty.

4975. SEC. 2. Any violation of section one shall be a felony, and on due conviction thereof, except for the taking of life, shall be a felony and be punished by imprisonment in the state prison for a period of not less than ten years, nor more than twenty-five years, and in case of taking life, the offense shall be murder in the first degree, and the penalty shall be death, as now provided by law.

An Act to prevent persons from unlawfully using or wearing the badge of the Grand Army of the Republic in this state.

Approved February 1, 1887, 31.

Misdemeanor.

4976. SECTION 1. Any person who shall willfully wear the badge of the Grand Army of the Republic, or who shall use or wear the same to obtain aid or assistance thereby, within this state, unless he shall be a member of the Grand Army of the Republic, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a term not to exceed thirty days in the county jail or a fine not to exceed twenty dollars, or by both such fine and imprisonment.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November 26, 1861.

Approved March 5, 1887, 137.

Unlawful to Keep Vicious Dog.

4977. SECTION 1. It is hereby made unlawful for any person in this state to own or keep any vicious dog. And if any person shall hereafter own or keep any such dog, and such dog shall injure any person, such owner or keeper of such dog shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine in a sum not exceeding five hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment, as the court shall adjudge.

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," approved November 26, A. D. 1861; to prohibit males declaring an illicit carnal knowledge of females.

Approved February 5, 1895, 12.

Misdemeanor.

4978. SECTION 1. Every male person who shall in any language or words whatsoever, either truthfully or falsely, orally declare, in the presence of two or more other persons, of good general reputation, in the locality in which they reside that he has had carnal knowledge of any certain female person other than his lawful wife, except when under oath in a court of justice, or elsewhere with

or without oath in the matter of a preparation for a judicial proceeding, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period of not less than ninety days, nor more than six months, or by a fine of not less than two hundred nor exceeding five hundred dollars.

An Act to prevent the pollution of the waters of the lakes, rivers and running streams of this state by sawdust.

Approved January 29, 1889, 24.

Unlawful to Deposit Sawdust.

4979. SECTION 1. It shall be unlawful for any person, firm, corporation or association to throw or deposit any sawdust in or on the waters of any lake, river or running stream in this state, or to throw or deposit any sawdust in any place where it may be carried or fall into or on the waters of any such lake, river or running stream.

Penalty.

4980. SEC. 2. Every person who may violate any of the provisions of this Act, or permit another in his or their employ to violate any of the provisions of this Act, or any officer or agent of any firm, corporation, association or person permitting another, subordinate to himself, in the employ of such person, corporation, association or person to violate any of the provisions of this Act, shall be guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars or imprisonment not exceeding six months, or by both such fine and imprisonment.

Beyond State Limits No Defense.

4981. SEC. 3. It shall be no defense to a prosecution for a violation of the provisions of this Act that the lake, river or running stream mentioned in section one of this Act is not wholly within the limits of this State.

An Act declaring the willful prevention of, or attempt to prevent, any person from procuring employment, to be a misdemeanor and providing a punishment therefor.

Approved March 15, 1895, 68.

Misdemeanor.

4982. SECTION 1. Any person, association, company, or corporation within this state, or agent, or officer, on behalf of such person, association, company, or corporation, who shall hereafter willfully do anything intended to prevent any person who shall have for any cause left or been discharged from his or its employ from obtaining employment elsewhere in this state, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than fifty (\$50) dollars, nor more than two hundred and fifty (\$250) dollars for each such offense, or imprisonment in the county jail at the rate of one day for each two (\$2) dollars of such fine.

An Act to prevent the spread of contagious diseases.

Approved February 20, 1869, 67.

Misdemeanor.

4983. SECTION 1. Any person who shall knowingly have or use about his premises, or who shall convey, or cause to be conveyed, into any neighborhood, any clothing, bedding, or other substance, used by or in taking care of any person afflicted by small-pox or other infectious or contagious disease, or infected thereby, or shall do any other act with the intent to, or necessarily tending to the spread of such disease into any neighborhood or locality; every person so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not more than

five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment; and the court trying any such offender, may also include in any judgment rendered an order to the effect that the clothing or other property infected be burned or otherwise destroyed, and shall have power to carry such order into effect.

Penalty for Violation.

4984. SEC. 2. Any person guilty of violating the provisions of section one of this Act, in addition to the penalties herein prescribed, shall be liable in a civil action, in damages, to any and all persons who may from that cause become infected with such contagious disease; said damages shall be so assessed as to include, in addition to other damages, all expenses incurred by reason of such sickness, loss of time, and burial expenses; and such action may also be maintained by the representative of any deceased person.

An Act to prevent the propagation and spread of contagious diseases.

Approved February 24, 1879, 47.

Removal of Deceased Person.

4985. SECTION 1. Any person or persons, company, association or corporation in this state who shall exhume or disinter, or who shall cause to be exhumed or disinterred, any human remains, or any part of such remains which have been buried in the ground in this state, for the purpose of transporting the same to any other state or foreign country, except under the conditions hereinafter provided, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than three hundred dollars nor more than five hundred dollars for each and every such offense, or shall be imprisoned in the county jail for any period not less than six months nor more than twelve months, or by both such fine and imprisonment.

Commissioners to Issue Permits.

4986. SEC. 2. The County Commissioners of the several counties in this state, in which said human remains are buried or interred, as provided in section one of this Act, are hereby authorized to grant and to issue written permits for the disinterments and removal of any such human remains referred to in section one of this Act, whenever in their judgment the public health will not be endangered by such disinterment and removal; *provided*, however, that no such permit shall be granted or issued under any circumstances or at any time where the party or parties buried or interred have died from or with any contagious or loathsome disease.

An Act relating to the burial of the dead of incorporated cities in the State of Nevada.

Approved March 8, 1879, 119.

Certificate of Physician—Coroner's Permit to Issue.

4987. SECTION 1. It shall be unlawful for any undertaker or other person within the State of Nevada to bury any deceased person who has died within the limits of any incorporated town or city in said state without first having procured a certificate from the physician who attended the said deceased person during his or her last illness, setting forth the name, nativity, sex, age, time of death, place of death and cause of death of said deceased person, as near as can be ascertained by said physician; *provided*, that in cases where no physician has attended said deceased person during his or her last illness, no such certificate shall be required, but the Coroner's permit mentioned in the next succeeding section of this Act shall be obtained, and shall be sufficient authority for the burial of such deceased person.

To Present Certificate—Coroner to Issue Permit.

4988. SEC. 2. It shall be the duty of any undertaker or other person obtain-

ing the certificate mentioned in the first section of this Act, before burying such deceased person, to present such certificate to the Coroner of the county within which such deceased person shall have died. The said Coroner, after being satisfied of the truth of the facts set forth in said certificate, shall issue a permit to the person presenting such certificate to bury the deceased person named in said certificate, or shall take such action under the law as the facts set forth in said certificate shall warrant. Said permit shall be in writing, signed by the Coroner, and shall set forth the facts under which it was issued. Said Coroner shall file in his office all physicians' certificates so presented to him, and shall keep a record of the same and a memorandum of all permits so issued by him, which records and memoranda he shall turn over to his successor in office as a part of the public records of his office. *As amended, Stats. 1881, 28.*

Offense, Charge and Violation.

4989. SEC. 3. Any physician who shall willfully issue or sign, or cause to be issued or signed, any certificate, as provided for in this Act, knowing the facts set forth in said certificate to be false, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the state prison for a term not less than one year and not more than five years.

Penalty for Violation.

4990. SEC. 4. Any person willfully and unlawfully violating any of the provisions of sections one and two of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than one month nor more than six months, or by both such fine and imprisonment.

MISCELLANEOUS.

An Act for the permanent location of the seat of government at Carson City.

Approved November 25, 1861, 54.

Carson City the Capital.

4991. SECTION 1. The town of Carson City is hereby made and declared the permanent seat of government of the State of Nevada.

Plaza Dedicated.

4992. SEC. 2. The plaza, in Carson City, bounded on the north by Musser street, on the east by Fall street, on the south by Second street, and on the west by Carson street, is hereby dedicated to the use of this state for the erection of public buildings.

An Act fixing the time when laws and joint resolutions shall take effect.

Approved January 10, 1865, 90.

When to Take Effect—Exception.

4993. SECTION 1. Every law and joint resolution hereafter passed by the legislature of the State of Nevada shall take effect and be in force from and after its passage, unless such law or joint resolution shall prescribe a different time.

An Act relating to accounts against the state.

Approved February 23, 1871, 70.

Duplicate Claims.

4994. SECTION 1. The State Printer, and all other persons having claims

against the state, shall file with the State Board of Examiners an itemized duplicate of their accounts.

Repeal.

4995. SEC. 2. Chapter fifty-eight of the laws of Nevada, approved February twenty-seventh, one thousand eight hundred and sixty-six, entitled "An Act relating to accounts against the state," and all other Acts, or parts of Acts, in conflict with this Act, are hereby repealed.

An Act to prevent persons having a claim or claims against the state from presenting the same claim or claims a second time.

Approved March 2, 1877, 132.

Release Given.

4996. SECTION 1. Any person or persons having a claim or claims against the state after the same shall have been presented and allowed, shall, before the same are paid by the Treasurer of the state, execute, under seal, a full and complete release of all claims and demands of whatever nature or kind against the state, since the organization of the state to the date of such payment; and the Treasurer of state shall carefully preserve and file alphabetically in his office for future reference all such releases so executed.

An Act to provide a seal of state for the State of Nevada.

Approved February 24, 1866, 94.

Design of Seal.

4997. SECTION 1. There shall be a seal of the State of Nevada, which shall be kept by the Governor and used by him officially, and shall be called "The Great Seal of the State of Nevada," the design of which shall be as follows, to wit: In the foreground, two large mountains, at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel penetrating the silver leads of the mountain, with a miner running out a car load of ore, and a team loaded with ore for the mill. Immediately in the foreground there shall be emblems indicative of the agricultural resources of the state, as follows: a plow, a sheaf, and a sickle. In the middle ground, a train of railroad cars, passing a mountain gorge; also a telegraph line extending along the line of the railroad. In the extreme background, a range of snow-clad mountains, with the rising sun in the east. Thirty-six stars to encircle the whole group. In an outer circle, the words, "The Great Seal of the State of Nevada," to be engraven with these words, for the motto of our state, "All for Our Country."

An Act in relation to the great seal of the State of Nevada.

Approved February 1, 1875, 50.

Secretary of State to Procure Seal.

4998. SECTION 1. It is hereby made the duty of the Secretary of State, as soon as practicable after the passage of this Act, to procure a seal, the design of which shall be the same as that upon the present great seal of the State of Nevada, as provided by an Act entitled "An Act to provide a seal of state for the State of Nevada," approved February twenty-fourth, eighteen hundred and sixty-six; and the size thereof shall not be more than two and three-fourths inches in diameter: and when completed, shall be known as the great seal of the State of Nevada, and shall be used instead of the present great seal.

Use of Seal.

4999. SEC. 2. The Secretary of State shall at all times have access to said seal, and may use the same in verification of all his official acts.

Sec. 3 obsolete.

An Act fixing the age of majority.

Approved November 21, 1861, 40.

Lawful Age.

5000. SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

An Act in relation to changing the names of individuals.

Approved February 10, 1869, 60.

Petition Filed.

5001. SECTION 1. Any person desiring to have his or her name changed, may file with the Clerk of the District Court, of the district in which he or she may reside, a petition, verified by his or her oath, addressed to said court, stating his or her present name, the name which he or she desires to bear in future, and the reason for desiring said change.

Notice Published.

5002. SEC. 2. Upon the filing of said petition the applicant shall make out and procure to be published in some newspaper of general circulation in the county, for the period of thirty days, a notice, stating the fact of the filing of the petition, its object, his or her present name, and the name which he or she desires to bear in future.

Court to Make Order, When.

5003. SEC. 3. If, within ten days after the expiration of the thirty days, no written objection shall be filed with said Clerk, upon proof of the filing of the petition and publication of notice, as required in section two, and upon being satisfied by the statements in the petition, or by other evidence, that good reason exists therefor, the said court shall make an order, changing the name of the applicant as prayed for in the petition. If, within said period, objection be filed, the court shall appoint a day for hearing the proofs respectively of the applicant and the objection, upon reasonable notice; and upon said day shall hear the proofs, and grant or refuse the prayer of the petitioner, according as the proofs shall or shall not show satisfactory reasons for making said change. Upon the making of an order, granting the prayer of the petitioner, the same shall be recorded as a judgment of said court, and the name of the applicant shall thereupon be as stated in said order.

An Act to prohibit the employment of Chinese and Mongolians in certain cases.

Approved March 6, 1879, 81.

Not Employed on Public Works.

5004. SECTION 1. From and after the passage of this Act, no Chinaman or Mongolian shall be employed, directly or indirectly, in any capacity, on any public works, or in or about any buildings or institutions, or grounds, under the control of this state.

Charters Not to Issue.

5005. SEC. 2. Hereafter no right of way or charter, or other privileges for the construction of any public works by any railroad or other corporation or association shall be granted to such corporation or association, except upon the express condition that no Mongolian or Chinese shall be employed on or about the construction of such work in any capacity.

Penalty.

5006. SEC. 3. Any violation of the conditions of this Act shall work a forfeiture of all rights, privileges, and franchise granted to such corporation or association.

An Act providing for the removal of county seats and permanent location of the same.

Approved March 2, 1877, 139.

Three-Fifths to Petition--Election.

5007. SECTION 1. Whenever three-fifths of the qualified electors of any county of this state, each elector being a taxpayer of said county, as appears by the last assessment roll, who have taken and subscribed to the oath or affirmation prescribed by law for the registration of electors in this state, shall petition the Board of County Commissioners of such county for the removal or location of the seat of justice of said county, the said County Commissioners shall, within sixty days thereafter, cause an election to be held at the various places of voting in said county, the said County Commissioners giving thirty days' notice in some newspaper published in the county or by posting written or printed notices at the several voting precincts in the county; such notice shall state the time and place of holding, and for what purpose such election is held; and any election provided for in this Act may be held on the day of any general election in said county. The place receiving a majority of all the votes cast at such election shall be declared the county seat; *provided*, that if no place receive a majority of all the votes cast, there shall be held a second election for said seat of justice, on a day not less than twenty nor more than thirty days after the vote of the first election is counted and declared by the said Board of County Commissioners, which last day shall be fixed by the Board of County Commissioners, and they shall give notice of the same for at least ten days in the manner provided for the first election. At said second election the balloting for the seat of justice shall be confined to the two places having the highest number of votes at the first election.

Vote Canvassed.

5008. SEC. 2. Within ten days after such election shall be held the Board of County Commissioners shall meet and proceed to canvass the vote, and the place which has received the majority of all the votes cast shall be proclaimed by them the seat of justice for said county.

To Remove Papers, etc.

5009. SEC. 3. The county officers who are required by law to keep their offices at the county seat, shall, within twenty days after said proclamation, remove all books, records, papers, and furniture belonging to the county to the place named, and if any officer shall fail to remove within the time prescribed by this section, he or his sureties shall pay to the county the sum of twenty dollars for each and every day of such failure, to be sued for and collected by the Board of County Commissioners.

Registry Agent to Certify.

5010. SEC. 4. Every petition for the purpose mentioned in section one of this Act shall be accompanied by the certificate of the Registry Agent of the district where the persons signing such petition reside, showing that all the persons whose names are signed to said petition are qualified electors of said county, as appears by the registry list of said district, or the affidavits on file in his office of persons not registered at the last general or special election, but who are qualified electors of said county.

Election, How Conducted.

5011. SEC. 5. The election provided for in this Act shall be conducted in all respects as provided for by the general election laws of this state, and any person swearing or affirming falsely in taking an oath provided for in this Act, shall be deemed guilty of perjury, and held subject to all the penalties attached by law to the commission of that crime.

Repeal.

5012. SEC. 6. The Act entitled "An Act providing for the removal of county seats and the permanent location of the same," approved March second, eighteen

hundred and sixty-seven [p. 78], and all Acts in conflict with this Act, are hereby repealed.

Hess v. Pegg, 7 Nev. 23.

An Act to prevent the practice of medicine and surgery by unqualified persons.

Approved January 28, 1875, 46.

Who May Practice Medicine or Surgery.

5013. SECTION 1. No person shall practice medicine or surgery in this state who has not received a medical education and a diploma from some regularly chartered medical school; said school to have a bona fide existence at the time when said diploma was granted.

To File and Record Copy of Diploma.

5014. SEC. 2. Every physician or surgeon, when about to take up his residence in this state, or who now resides here, shall file for record with the County Recorder of the county in which he is about to practice his profession, or where he now practices it, a copy of his diploma, at the same time exhibiting the original, or a certificate from the Dean of the medical school of which he is a graduate, certifying to his graduation.

Affidavit.

5015. SEC. 3. Every physician or surgeon, when filing a copy of his diploma or certificate of graduation, as required by section two of this Act, shall be identified as the person named in the papers about to be filed, either by the affidavit of two citizens of the county, or by his affidavit taken before a Notary Public or Commissioner of Deeds for this state, which affidavit shall be filed in the office of the County Recorder.

Misdemeanor.

5016. SEC. 4. Any person practicing medicine or surgery in this state, without complying with sections one, two, and three of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than six (6) months, or by both fine and imprisonment, for each and every offense; and any person filing, or attempting to file, as his own, the diploma or certificate of graduation of another, or a forged affidavit of identification, shall be guilty of a felony, and upon conviction shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for said offense.

Sheriff to Arrest.

5017. SEC. 5. It shall be the duty of the police, Sheriff, or Constable, to arrest all persons practicing medicine or surgery in this state who have not complied with the provisions of this Act, and the officer making the arrest shall be entitled to one-half of the fine collected.

Exceptions.

5018. SEC. 6. No portion of this Act shall apply to any person who, in an emergency, may prescribe or give advice in medicine or surgery in a township where no physician resides, or when no physician or surgeon resides within convenient distance; nor to those who have practiced medicine or surgery in this state for a period of ten years next preceding the passage of this Act, nor to persons prescribing in their own family.

1. ABOVE ACT HELD CONSTITUTIONAL—Section 6 Construed. Ex Parte Spinney, 10 Nev. 323.

2. OPIUM ACT—Sale by Physician—Must Come Within Provisions of Above Act. State v. Ching Gang, 16 Nev. 62.

An Act to regulate the measurement of charcoal.

Approved February 26, 1879, 50.

Standard of Measure.

5019. SECTION 1. The standard measure of a bushel of charcoal is hereby established at two thousand seven hundred and forty-seven and seven hundred and fifteen one thousandths cubic inches, stroke measure, and all charcoal bought or sold by actual measurement, must be measured in the mode and manner herein provided.

Sealed Measures Kept.

5020. SEC. 2. All persons, or corporations, purchasing or consuming more than twenty thousand bushels of charcoal annually, shall keep a sealed measure of convenient size.

Duties of Surveyors.

5021. SEC. 3. For the purpose of this Act, any County Surveyor is empowered to estimate the dimensions of any bin or measure, and he shall inscribe thereon, in plain letters, the number of standard bushels it will contain, together with his own name or signature; he shall receive for such services five dollars for each measure so inscribed; his fee to be paid by those required under the provisions of this Act, to maintain sealed measures.

Fines.

5022. SEC. 4. Any person, or Superintendent, or manager of any corporation or company, violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars.

An Act to encourage the collection of geological, paleontological, and mineral specimens in this state.

Approved March 5, 1879, 64.

Exempt from Execution.

5023. SECTION 1. Any person who shall be the bona fide owner of a collection, or cabinet of metal-bearing ores, geological specimens, art curiosities, or paleontological remains, and who shall properly arrange, classify, number, and catalogue in a suitable book or books of reference, any such collection of ores, specimens, curiosities, or remains, whether the same shall be kept at a private residence or in a public hall, or in a place of public business or traffic, the said bona fide owner of such collection shall be entitled to hold the same exempt from execution, as other property is exempted from execution under the provisions of section two hundred and twenty-one of an Act entitled "An Act to regulate proceedings in civil cases in the courts of justice of this state, and to repeal all other Acts in relation thereto," approved March eighth, eighteen hundred and sixty-nine.

What Not Exempt.

5024. SEC. 2. Nothing in section one of this Act shall be construed so as to exempt from execution any numismatic collection, such as gold and silver coins, paper currency, bank notes, legal tender currency, national or state bonds, or any negotiable note, or valuable copper, bronze, nickel, platinum, or other coin whatsoever.

Must Keep Catalogues.

5025. SEC. 3. It is hereby made the duty of the owner of any such collection or cabinet, as described in section one of this Act, to keep constantly at or near such collections or cabinet, for the free inspection of all visitors who may desire to examine the same, either written or printed catalogues, as provided in section one of this Act; and any person owning such collection or cabinet, who shall fail or neglect to comply with the provisions of this section of this Act, shall forfeit

all right to hold such collections or cabinet as exempt from legal execution, as provided in section one of this Act.

An Act for the protection of proprietors of hotels and lodging houses.

Approved March 2, 1867, 69.

Proprietor May Sell Baggage.

5026. SECTION 1. Whenever any person shall leave a hotel or lodging house, indebted to the proprietor or proprietors thereof, and shall remain absent for the period of six months, it shall be lawful for such proprietor or proprietors to sell, or cause to be sold, at public auction, any baggage or property of such person so indebted, or so much thereof as may be necessary to pay such indebtedness, expenses and charges of sale, which may have been left at such hotel or lodging house by such person.

Proceeds, How Disposed Of.

5027. SEC. 2. All baggage or property, of whatever description, left at a hotel or lodging house for the period of twelve months, may be sold at public auction by the proprietor or proprietors thereof, and the proceeds arising from such sale, after deducting the expenses and charges of sale and storage, shall be paid over to the County Treasurer of the county in which such baggage or property is left, to be held by him for the period of six months for the benefit of the owner thereof, at which time, if the same be not paid to the owner, or some person legally entitled to the same, it shall be transferred to the school fund of the county.

Sales, How Made.

5028. SEC. 3. All sales made under the preceding sections of this Act shall be made by a licensed auctioneer, or by some Constable of the township in which such baggage or property may be left; *provided*, that no sale shall be valid unless a notice of such sale shall be posted up in three public places in such township for the period of twenty days immediately preceding the day of sale, giving a particular description of the property to be sold, the time and place of such sale, the name of the hotel or lodging house at which such baggage or property may be left, the names of the owner or owners of such baggage or property, when known, and signed by such auctioneer or Constable.

Baggage Heretofore Left May Be Sold.

5029. SEC. 4. It shall be lawful for the proprietor or proprietors of any hotel or lodging house, at which any baggage or property may have heretofore been left, to cause the same to be sold under the provisions of this Act; *provided*, that for the purposes of such sale, such baggage or property shall be considered as left at such hotel or lodging house at the date of the passage of this Act.

An Act defining the rights of common carriers, as to disposition of unclaimed property.

Approved February 25, 1875, 86.

Storage of Unclaimed Freight, etc.

5030. SECTION 1. When any goods, merchandise, or other property has been received by any railroad or express company, or other common carrier, commission, forwarding merchant, or warehouseman, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission, forwarding merchant or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges on same are paid.

Responsibility of Carrier.

5031. SEC. 2. If a consignee does not accept and remove freight within twenty-four hours after notice has been served on him by the carrier, the carrier

is released from further liability, by placing the freight in a suitable warehouse on storage, or the carrier may hold the same upon his responsibility as a warehouseman.

Service of Notice.

5032. SEC. 3. If the consignee's place of residence or business be unknown, notice may be served on him through the postoffice, and the carrier may place the freight in a suitable warehouse on storage and give notice thereof to the consignor.

Perishable Freight.

5033. SEC. 4. If from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien of freightage.

Sale of Property to Pay Freight—Surplus Proceeds, How Disposed Of.

5034. SEC. 5. If no person calls for the freight or other property received by such railroad, express company or other common carrier, commission, forwarding merchant, or warehouseman, within sixty days from the receipt thereof, the carrier, forwarding, commission merchant, or warehouseman may sell such property, or so much thereof, at auction to the highest bidders, as will pay freight and other just and reasonable charges, first having given notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper ten days, or if a weekly paper, four weeks, published where such sale is to take place, or if there is no paper published at the place where such sale is to take place, by posting a notice of the sale conspicuously in at least three public places; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property, at any time thereafter, on demand being made therefor within six months after the sale; *provided*, that any trunk or valise, with their contents, shall be held six months before being advertised for sale.

Unclaimed Proceeds, How Disposed Of.

5035. SEC. 6. If the owner, or his agent, fails to demand such surplus within six months from the time of such sale, then it shall be paid over to the County Treasurer of the county in which the sale is made, to be held by him for a period of twelve months, subject to the order of the owner, after which time, if the same is not paid to the owner, or his authorized agent, or some person legally entitled to receive the same, it shall be paid over to the Treasurer of the county where such sale is made, who shall pay the same over to the State Treasurer for the benefit of the state school fund.

An Act for the protection of jewelers, watchmakers and watch repairers.

Approved February 10, 1885, 20.

Articles Remaining Over One Year.

5036. SECTION 1. Watches, jewelry, or other articles, after having been repaired and remaining over one year with any jeweler, watchmaker or watch repairer in this state, shall be subject to sale at public auction, to the highest bidder, for charges due thereon for repairs and accrued interest.

Notice Posted.

5037. SEC. 2. At least twenty days before offering any of the articles mentioned in this Act for sale, the holder or holders thereof shall post in front of his or their place of business the day and date of sale, and a particular description of the article to be sold, name of depositor, amount of charges thereon and accrued legal interest, which charges and interest shall become a lien on the article so posted for sale, which sale shall be by public auction to the highest bidder.

Disposal of Excess.

5038. SEC. 3. The excess, if any, after deducting charges for repairs and interest, shall be placed in the county treasury, subject to the laws governing escheats.

Costs of Sale Limited.

5039. SEC. 4. The cost of any sale of any such watch, watches, jewelry, or other article, shall in no event be more than ten per cent on the whole amount realized from the sale of the same, and any watchmaker, watch repairer, or jeweler, who fails to pay the excess aforesaid into the county treasury, as provided in section three of this Act, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five hundred dollars, nor less than ten dollars, and costs of suit, and on failure of defendant to pay such fine and costs he shall be imprisoned in the county jail, at the rate of one day for every two dollars of such fine and costs, until the whole thereof shall be fully satisfied.

An Act concerning trade marks and names.

Approved March 8, 1865, 263.

Unlawful to Imitate.

5040. SECTION 1. When a person who has complied with the provisions of section two of this Act, uses any peculiar name, letters, marks, device, figures, or other trade mark or name, cut, stamped, cast, or engraved upon, or in any manner attached to or connected with, any article, or with the covering or wrapping thereof, manufactured or sold by him, to designate it as an article of a peculiar kind, character, or quality, or as an article manufactured or sold by him, or if such trade mark or name be so connected with any bottle, box, cask, or other thing used for holding such article, it shall be unlawful for any other person, without his consent, to use said trade mark or name, or any similar trade mark or name, for the purpose of representing any article to have been manufactured or sold by the person rightfully using such trade mark or name, or to be of the same kind, character, or quality as that manufactured or sold by the person rightfully using such trade mark or name.

Claim Filed.

5041. SEC. 2. Any person wishing to secure the exclusive use of any such trade mark or name, under the provisions of this Act, shall file his claim to the same, and a copy or description of such trade mark or name, with the Secretary of State.

Fee for Filing.

5042. SEC. 3. The Secretary of State shall keep a record of all trade marks or names filed in his office, with the date when filed, and name of claimant, for public examination. A fee of twenty dollars shall be paid to the Secretary of State at the time of filing each copy and description of any trade mark or name, by the party claiming the use and benefit of the same. It is hereby made the duty of the Secretary of State to pay all fees accruing under this section into the state library fund.

See Sec. 1938.

Violation of Act—Punishment.

5043. SEC. 4. Any person violating the provisions of the first section of this Act shall be guilty of misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than five days, nor more than thirty days, or by both such fine and imprisonment; and he shall be further liable to any party aggrieved by such violation, for all damages actually incurred, to be recovered as a debt in any court of competent jurisdiction.

Counterfeiting.

5044. SEC. 5. It shall be unlawful for any person to counterfeit any trade mark or name, or to have or use a counterfeit trade mark or name, or sell any article bearing or having in any way connected with it a counterfeit trade mark or name, which has been filed according to section two of this Act, knowing it to be such, or having good and sufficient reason to know it to be such. Every alteration or imitation of any trade mark or name which has been filed according to section two of this Act, which shall be made, applied, or used, or which shall cause any trade mark or name, with such alterations or imitation, to resemble any genuine trade mark or name, so as to be calculated or likely to deceive, shall be deemed to be a counterfeit trade mark or name, within the meaning of this Act, and every act of making, applying, or otherwise using any such alteration or imitation, as aforesaid, done by any person, such person shall be deemed to be guilty of counterfeiting a trade mark or name, or knowingly using a counterfeit trade mark or name, within the meaning of this Act. Every person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section four of this Act.

Penalty for Use of Trade Mark.

5045. SEC. 6. Every person who shall have or use any cask, bottle, vessel, case, cover, label, or other thing, bearing or having in any way connected with it the trade mark or name of another, which has been filed according to section two of this Act, for the purpose of disposing of any article with intent to deceive or defraud, other than that which said cask, bottle, vessel, case, cover, label, or other thing originally contained, or was connected with by the owner of said trade mark or name, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section four of this Act.

Misdemeanor to Counsel Use.

5046. SEC. 7. Every person who shall knowingly aid, or abet, or counsel in, or procure the commission of any offense which is by this Act made a misdemeanor, shall be deemed and held to be guilty of a misdemeanor, and shall be subject to the penalties provided in section four of this Act.

Construction of Act.

5047. SEC. 8. This Act shall not be so construed as to permit any person to file without authority from the owner, any trade mark or name owned, or previously used by another person, nor in any way to interfere with, hinder, prevent, or restrain the importation or sale, by any person, of genuine articles of merchandise having, or belonging thereto, genuine trade marks or names manufactured or sold in other states or countries.

Owner of Trade Mark.

5048. SEC. 9. Any person who has first adopted and used a trade mark or name, whether within or beyond the limits of this state, shall be considered its original owner, and the ownership may be transferred in the same manner as personal property, and shall be entitled to the same protection by suits at law as other personal property.

Claim, What to Set Forth.

5049. SEC. 10. Every person filing with the Secretary of State, as provided in section two of this Act, his claim to any trade mark or name, shall have attached to the copy and description thereof his affidavit, duly certified to by any officer authorized by the laws of this state to take acknowledgments of conveyances, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner or agent of the accompanying trade mark or name.

Injunction.

5050. SEC. 11. Any court of competent jurisdiction may restrain, by injunction, any use of trade marks or names in violation of any section of this Act.

Evidence on Trial.

5051. SEC. 12. No person otherwise competent as a witness shall be disqualified or excused from testifying as a witness, either before a grand jury or a petit jury, or otherwise, concerning any offense mentioned in this Act, on the ground that his testimony may criminate himself, but such testimony shall be reduced to writing, and no indictment or prosecution shall afterward be brought against him for said offenses, concerning which he has testified as a witness.

Immunity of Witness.

5052. SEC. 13. Any witness called to give testimony on behalf of the state, before any grand jury, or before any court of justice, shall be required to give such testimony, which shall be reduced to writing, and such witness shall not be liable to suffer any punishment or forfeiture for any offense against the provisions of this Act, so disclosed.

An Act to provide for payment of funeral expenses of indigent ex-soldiers.

Approved February 27, 1893, 55.

Burial of Ex-Soldiers.

5053. SECTION 1. Whenever the remains of any indigent ex-soldier, dying within this state, shall have been given interment by and at the expense of any Grand Army post, the post rendering such service shall be entitled to receive from the county of which such deceased ex-soldier was a resident at the time of his death, a sum not less than twenty-five dollars and not more than forty dollars, such sum to be allowed and paid in the manner provided for the payment of other bills against the county.

An Act relating to the purchase of supplies.

Approved March 9, 1893, 129.

Bought of Resident Merchants—Proviso.

5054. SECTION 1. All supplies and goods purchased for the State of Nevada, or any county in the state, shall be purchased of resident merchants and business men of the State of Nevada, whenever said merchants and business men are ready to supply such supplies and goods at an advance of not more than ten per cent over San Francisco prices, freight added; *provided*, that all supplies for the use of the county shall be purchased by the County Commissioners.

An Act establishing Arbor Day.

Approved February 10, 1887, 51.

Governor's Proclamation.

5055. SECTION 1. Arbor Day is hereby established in the State of Nevada, and shall be fixed each year by proclamation of the Governor, at least one month before the fixing of such date, and it shall be observed as a holiday by the public schools of the state; *provided*, that nothing in this Act shall be so construed as making this a legal holiday, so far as the courts and civil contracts are concerned.

Planting Trees, Shrubs and Vines.

5056. SEC. 2. His Excellency the Governor is requested to make proclamation setting forth the provisions of the first section of this statute, and recommending that Arbor Day so established be observed by the people of the state in the planting of trees, shrubs and vines, in the promotion of forest growth and culture, in the adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the character of the day so established.

An Act to amend an Act entitled "An Act to provide for the appointment of Inspectors of Hides, defining their duties, and mode of compensation," approved March 3, 1881.

Approved March 10, 1897, 72.

Appointment of Hide Inspector—Duties.

5057. SECTION 1. It shall be the duty of any district court in this state, upon the application in writing, of three or more property owners in any township of any county within said district, to appoint in and for such township, and for such length of time as may be deemed necessary not exceeding two years, an Inspector of Hides, whose duty it shall be to examine, when requested so to do by any three taxpayers of said township, the hides of any or all cattle killed in said township, and to mark each hide inspected in such a manner as may be indicated by the District Judge, and shall, upon the request of said taxpayers as aforesaid, have the right, and it shall be his duty to go upon the premises of any resident of such township and make search for any hides concealed, or which such Inspector or said taxpayers may have reason to believe are concealed upon said premises, and shall report, in writing, to the District Attorney of the county in which he has been appointed at such times as may be designated by the district court making the appointment, giving the number of hides inspected, the brands or other marks upon such hides, the names of the persons in whose possession they were found, and whether the persons having them in possession had killed the cattle from which the hides were taken, or had obtained them from other persons, and the names of such persons.

Compensation.

5058. SEC. 2. The rate of compensation of such Inspectors shall be fixed by the court at the time the appointments are made, and shall be paid by the parties on whose petition they are appointed, or by the taxpayers upon whose request they act, as provided in section one of this Act.

Above Act supersedes Act of 1881, 118.

An Act to provide for the recording of births and deaths in the several counties of the State of Nevada.

Approved February 26, 1887, 89.

Record of Births—Form.

5059. SECTION 1. Every person who shall officiate at the birth of a child shall make a record thereof, and within three months after such birth shall make and deliver to the Recorder of Deeds of the county wherein the birth took place, a certificate under his hand containing the facts of such birth. The certificate may be in the following form:

State of Nevada, County of _____, ss. This is to certify that the undersigned, a physician (or midwife, as the case may be) did, on the ____ day of _____ 18__, officiate at the birth, to the wife of _____, of a son (or daughter, as the case may be,) in the presence of _____ and _____, witnesses. A. B., physician (or midwife).

Record of Death—Form.

5060. SEC. 2. Every person who shall officiate at the burial of any deceased person shall make a record thereof, and within two weeks after such death shall make and deliver or send by due course of mail or express, or by such other manner as will insure safe transit to the Recorder of Deeds of the county wherein such death took place a certificate under his hand containing particulars of such death. The certificate may be in the following form:

State of Nevada, County of _____, ss. This is to certify that the undersigned, an undertaker (or whatever his occupation may be,) did, on the ____ day of _____, 18__, officiate as undertaker at the burial of _____ (or of a man or of a woman whose name is unknown), a native of _____ (or whose nativity is

unknown), aged ---- years (or whose age is unknown), in the presence of----- and -----, witnesses. A. B., Undertaker.

Shall Be Filed and Recorded.

5061. SEC. 3. All certificates provided for in sections one and two of this Act shall be filed and recorded by the said Recorder in a book to be kept by him for that purpose; and for each certificate so recorded the Recorder shall receive a fee of fifty cents, to be paid from the general county fund in the same manner that other claims against said fund are allowed and paid. The Board of County Commissioners of the several counties shall provide blank certificates, to be paid for by the county, to be furnished to physicians, midwives and undertakers to enable them to carry out and comply with the requirements of this Act.

Penalty for Failure to Comply.

5062. SEC. 4. Every person officiating at a birth or a death, as provided in this Act, who shall neglect to make and deliver to the Recorder a certificate thereof, within the time specified in sections one and two, shall forfeit for such neglect a sum not less than twenty dollars nor more than fifty dollars, and any Recorder who shall neglect to record such certificate so delivered shall forfeit a like penalty; such penalties to be recovered in any court of competent jurisdiction, on complaint of any person who feels aggrieved by such neglect.

Penalty for False Certificate.

5063. SEC. 5. If any person shall willfully make any false certificate of any birth or death, such person shall forfeit for every such offense a sum not to exceed five hundred dollars or be confined in the county jail for any period not to exceed six months, or by both such fine and imprisonment, in the discretion of the court.

An Act to enforce protection of life in certain cases.

Approved March 5, 1887, 135.

Doors of Public Buildings.

5064. SECTION 1. In all public buildings and edifices in this state, such as court houses, churches, school houses, theaters and other places where the public assemble in large bodies, the doors whereby people enter and depart from such places, shall open outwardly, or outwardly and inwardly, in all such buildings and edifices hereafter erected, and in all such buildings and edifices now in use. If such doors do not now conform to the foregoing requirement, they must be made so to do prior to the first day of July, A. D. 1887.

Penalty.

5065. SEC. 2. Any person or persons, agent or agents, of any corporations, found guilty of violating any of the provisions of this Act shall be punished by fine not less than one hundred dollars nor exceeding one thousand dollars, or by imprisonment not exceeding one year in the state prison, or by both such fine and imprisonment as the court shall adjudge.

An Act to provide for free public libraries and other matters relating thereto.

Approved March 16, 1895, 79.

Fixing Rate of Taxation.

5066. SECTION 1. Whenever a petition for the establishment of a free public library, signed by a majority of the taxpayers or by taxpayers representing a majority of the taxable property, as shown by the last preceding assessment roll of any city, unincorporated town or school district, shall be presented to the Board of County Commissioners of the county in which said city, unincorporated town or school district is situated, accompanied by affidavit of one or more of the signers thereof, that the signatures thereto are genuine, the said Board of County

Commissioners shall levy annually thereafter, in the manner and at the time other taxes are levied, a tax upon all the taxable property of the said city, unincorporated town or school district, of not less than ten cents nor more than fifty cents on each one hundred dollars valuation, of the taxable property therein, for the purpose of creating a fund to be known as the library fund. *As amended, Stats. 1897, 30.*

Library Trustees.

5067. SEC. 2. Upon the presentation of a petition as provided in section one of this Act, the said Board of County Commissioners shall appoint three competent persons, to be known as Library Trustees, who shall hold office for the period of one, two and three years, respectively, and shall annually thereafter appoint one Library Trustee, who shall hold office for the period of three years, and all vacancies which may occur at any time in the said office of Library Trustee, shall be filled by appointment by the said Board of County Commissioners; said Trustees shall serve without compensation, and shall hold office until their successors are appointed and qualified.

Powers of Library Trustees.

5068. SEC. 3. Said Library Trustees shall have power to, and shall establish and maintain a library and reading room, make purchases, secure rooms, employ assistants, appoint officers, establish by-laws and regulations, and manage and control the affairs and business of said library; and they and their successors, shall hold and possess the property and effects of said library and reading room in trust for the public and for the purpose of said library and reading room, and may as said Library Trustees, and for the purpose hereinbefore provided, acquire and hold real estate and personal property, by purchase or bequest, and administer any trust declared or created, for such library or reading room, and may prosecute, maintain or defend any action, in reference to the property or affairs of said library and reading room.

Manner of Paying Claims.

5069. SEC. 4. All claims for indebtedness incurred or created by said Library Trustees, shall be audited by a majority of said Library Trustees, and presented to and acted upon by the Board of County Commissioners, and paid out of said library fund in the same manner as claims against the county are presented, acted upon and paid. No indebtedness in excess of the amount of money, to be realized in any year from said levy for said library fund, shall be incurred by said Library Trustees, or allowed by the Board of County Commissioners, and in no case shall any claim except for library and reading room purposes, be allowed or paid out of said library fund.

Library and Rooms to Be Free.

5070. SEC. 5. Said library and reading room shall forever be and remain free and accessible to the people of such city, unincorporated town or school district, subject to such reasonable rules and regulations as said Library Trustees may adopt.

An Act fixing the time for the opening and closing of saloons and gaming houses.

Approved March 6, 1889, 71.

Hotels Excepted.

5071. SECTION 1. On and after the first day of April, A. D. one thousand eight hundred and eighty-nine, it shall be unlawful for any person or persons, firm or corporation engaged in the business of selling any kind or kinds of spirituous or malt liquors by the glass or drink, or engaged in carrying on or conducting any kind or character of gambling or games of chance, to open such place of business for the sale of such liquors, or for the prosecution of such games, at an earlier hour than six o'clock in the morning of each or any day, and no such per-

son or persons, firm or corporation shall sell or give away any such liquors or continue or allow the continuance of any such games in or about their respective places of business after the hour of twelve o'clock p. m. of each or any day, and all such places of business, excepting hotels, shall be closed between the hours of midnight and the hour of six o'clock the next morning of each and every day.

Closing Saloons—Servants Liable to Penalties.

5072. SEC. 2. A violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction the offender shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not less than ten days nor more than six months, or by both such fine and imprisonment, and persons acting as servants, employees or agents shall be equally liable with their employer and principals. *As amended, Stats. 1891, 19.*

Peace Officers to Enforce.

5073. SEC. 3. Peace officers are hereby especially required to strictly enforce the provisions of this Act, and a failure on the part of any such officer to perform such duty shall render him liable to removal from office as prescribed by law.

An Act concerning the liabilities of proprietors and keepers of saloons and gambling houses.

Approved March 19, 1897, 111.

Liable for Damages.

5074. SECTION 1. Any proprietor or keeper of a saloon, gambling house or resort where liquors are sold, who shall sell or give to any minor any spirituous or malt liquors, or who shall permit any minor to engage in any game in his saloon, gambling house or resort where liquors are sold, or who shall permit any minor to lounge or remain therein, shall be liable to the parent or guardian of such minor in damages, which may be collected by a civil action in a sum not less than fifty nor more than one thousand dollars.

An Act fixing the rates for official advertising by the State of Nevada and the several counties of the State.

Approved March 16, 1897, 92.

Rates Fixed.

5075. SECTION 1. All advertising ordered or required by the State of Nevada, or by the respective counties of the state shall be paid for by the state or the county ordering or requiring the same at the rate of two dollars per square of ten lines nonpareil measurement for the first insertion and one dollar per square for each subsequent insertion; an insertion be held to be one publication per week whether the newspaper in which such advertising is ordered to be done be published daily or weekly; *provided*, that nothing herein contained shall prohibit Boards of County Commissioners from entering into annual contracts for the entire official printing and advertising of their respective counties when in their judgment a saving of public funds will be effected thereby.

An Act to prevent the adulteration of candy.

Approved February 26, 1897, 23.

Sale of Adulterated Candy.

5076. SECTION 1. No person, firm, or corporation shall, either directly or by agent or employee, or as the agent or employee of any other person, firm, or corporation, manufacture for sale, or knowingly sell, or offer for sale any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, or by poisonous colors, or flavors, or other matters or ingredients deleterious or injurious to health.

Adulterated Candy to Be Destroyed.

5077. SEC. 2. Any candy so adulterated shall be seized by any police, constabulary or arresting officer, and shall be destroyed under the direction of the Judge of the court before whom any complaint shall be made for a violation of any provision or requirement of this Act.

Penalty.

5078. SEC. 3. Any person violating any provision or requirement of this Act shall be punished by a fine not exceeding one hundred dollars, nor less than ten dollars, or by imprisonment in the county jail for a period not exceeding fifty days, nor less than twenty-five days.

An Act to encourage the sinking of artesian wells.

Approved March 5, 1887, 119.

Bounty for Sinking—Additional Bounty.

5079. SECTION 1. Every person, firm, company, corporation or association that shall, after the passage of this Act, commence the sinking of artesian wells, for stock or agricultural purposes, shall be entitled for sinking such artesian well, where flowing water is obtained, the following specified sums: For the first two hundred feet, one dollar and twenty-five cents per foot; for the third one hundred feet, one dollar and fifty cents per foot; for the fourth one hundred feet, two dollars per foot; for the fifth one hundred feet, two dollars and twenty-five cents per foot; for the sixth one hundred feet, two dollars and fifty cents per foot; for the seventh one hundred feet, three dollars per foot; for the eighth one hundred feet, three dollars and fifty cents per foot; for the ninth one hundred feet, four dollars per foot; for the tenth one hundred feet, four dollars and fifty cents per foot; for all depths exceeding one thousand feet, five dollars per foot for each and every foot below the said one thousand feet. And an additional bounty of one thousand dollars for every well sunk to the depth of one thousand feet or more; *provided*, that such well shall furnish twenty thousand gallons of water each twenty-four hours, flowing continuously for thirty days, said sums to be paid in the manner provided for in sections four and five of this Act; *provided*, that no bounty shall be paid on any well which does not furnish seven thousand gallons of water in each twenty-four hours, flowing continuously for thirty days; *and, provided further*, that no two wells shall receive a bounty if located within the same county. Where two or more wells within the prescribed limit apply for a bounty, the well which first furnished the amount of water required by this Act shall be entitled to the bounty allowed by this Act. *As amended, Stats. 1889, 84.*

Shall File Statement With County Recorder.

5080. SEC. 2. Every person, firm, company, corporation or association that proposes taking the benefit of this Act, shall, before commencing to sink such artesian well, file with the County Recorder of the county in which said well is situated, a sworn statement setting forth (if on surveyed land) the range, township, section and subdivision of section, and if on unsurveyed land, then the statement shall contain such description as will enable the Commissioner herein provided for to ascertain its locality.

Commissioners Shall Authorize.

5081. SEC. 3. Whenever any person, firm, company, corporation or association shall report to the Board of County Commissioners the completion of an artesian well, and demand the bounty provided for in this Act, the said Board of County Commissioners shall authorize and instruct their Chairman or a member of their body to proceed to said well and measure its depth and diameter, and the amount of water flowing therefrom, and report said facts, under oath, to the said Board of County Commissioners; *provided*, that the expenses of said measure-

ments, including report and traveling fees, shall not exceed twenty-five dollars, which amount shall be paid by the party making demand for such bounty.

Clerk Shall Issue Certificate.

5082. SEC. 4. The Board of County Commissioners shall, when such report is received, showing the depth, diameter, and the quantity of water flowing from such well, cause the Clerk of said board to issue, under his official seal, to the person, firm, company, corporation or association applying for the bounty herein provided for, a certificate setting forth the depth, diameter and the quantity of water flowing from such well, upon which a bounty is demanded.

Controller Shall Draw Warrant.

5083. SEC. 5. The State Controller shall, upon receipt of said certificate, as provided for in section four of this Act, draw his warrant in favor of the person, firm, company, corporation or association named therein, for the amount due, and the State Treasurer is hereby directed to pay the same.

SEC. 6 obsolete.

The foregoing Act supersedes Stats. 1879, 86.

An Act to provide for the destruction of noxious animals and to repeal an Act relating thereto.

Approved February 3, 1887, 38.

Bounties for What Animals.

5084. SECTION 1. If any person shall take and kill within this state any of the following noxious animals, he shall be entitled to receive out of the treasury of the county within which such noxious animals shall have been taken, the following bounties, to wit: For every coyote or prairie wolf, fifty cents; for every lynx or wildcat, one dollar; for every California lion, one dollar; all of which bounties shall be subject to the provisions of this Act; *provided*, that no person shall be entitled to apply for or receive bounty money for any number of scalps less than ten at any one time. *As amended, Stats. 1899, 61.*

Scalps to Be Taken.

5085. SEC. 2. The person intending to apply for such bounty shall take the scalps with the ears connected thereto of the noxious animals killed by him, to some Justice of the Peace of the county within which such noxious animals shall have been taken.

Claimant to Make Oath.

5086. SEC. 3. The person claiming such bounty shall then be sworn by such Justice, and state on oath the time and place when and where said noxious animals for which a bounty is claimed by him, were taken and killed, and shall also submit to such further examination on oath concerning the taking and killing of such noxious animals as the Justice may require.

Justice to Give a Certificate—Fees of Justice.

5087. SEC. 4. If it shall appear to the Justice that the noxious animals have been taken and killed within the county, he shall cut off the ears from the scalps and give to the person so sworn a certificate stating the number and kind of scalps deposited with said Justice. The Justice shall within thirty days thereafter send to the Sheriff of his county all scalps deposited with him, together with a statement naming the person depositing the same, the time deposited, and the kind of scalps. Upon receipt of said scalps and statement, the Sheriff, County Clerk and District Attorney, as a part of their official duties, shall compare the number and kind of scalps received by the said Sheriff with said statement, and immediately thereafter said officials shall destroy said scalps and file the said statement with the Clerk of the Board of County Commissioners. The said Justice shall receive for each oath administered twenty-five cents, and for each cer-

tificate twenty-five cents, to be paid by the party applying for said bounty, and in no case to be a charge against the county. *As amended, Stats. 1899, 61.*

Amount Allowed.

5088. SEC. 5. Upon the presentation to the Board of County Commissioners of the proper county of any such certificate, they are hereby authorized and directed to allow the amount due under the provisions of this Act, to the person therein named, out of the general fund of the county.

An Act to provide for the destruction of certain noxious animals.

Approved March 13, 1891, 37.

Bounty for Destruction of Gophers.

5089. SECTION 1. If any person shall take and kill within this state any pocket gophers he shall be entitled to receive out of the treasury of the county within which such pocket gophers shall have been taken the following bounty, to wit: For every pocket gopher, one and one-half cents; *provided*, no person shall be entitled to apply for or receive bounty money for any number of scalps less than one hundred at any one time, and all bounties to be paid for the object herein set forth shall be subject to the provision of this Act; *and, further provided*, that the term pocket gophers herein shall not include squirrels or chipmunks. *As amended, Stats. 1893, 20.*

When Bounty May Be Claimed.

5090. SEC. 2. The person intending to apply for such bounty shall take the heads, or skin of the heads, with pockets attached, with the ears connected thereto, of the pocket gophers killed by him to some Justice of the Peace of the county wherein which such pocket gophers shall have been taken.

Person to Be Sworn by Justice.

5091. SEC. 3. The person claiming such bounty shall then be sworn by such Justice of the Peace, and state on oath the time and place when and where said pocket gophers for which a bounty is claimed by him, when taken and killed, and shall also submit to such further examination, on oath, concerning the killing and taking of such pocket gophers, as the Justice of the Peace may require. *As amended, Stats. 1893, 20.*

Duties of Justice of the Peace.

5092. SEC. 4. If it shall appear to the Justice of the Peace that the pocket gopher or pocket gophers have been taken and killed within the county, he shall cut off the ears from the scalp and destroy the said ears, and give to the person so sworn a certificate stating the number of scalps deposited with and destroyed by him. The said Justice of the Peace shall receive for each oath administered, twenty-five cents, and for each certificate, twenty-five cents, to be paid by the party applying for such bounty, and in no case to be a charge against the county. *As amended, Stats. 1893, 20.*

Bounties Allowed, How.

5093. SEC. 5. Upon the presentation to the Board of County Commissioners of the proper county of any such certificate, they are hereby authorized and directed to allow the amount due under the provisions of this Act to the person therein named, out of the general fund of such county.

An Act to provide for the compiling and publishing of the laws of the State of Nevada.

Approved February 15, 1890, 19.

When to Be Completed—Supreme Court to Pass Upon the Work.

5094. SECTION 1. Upon the compilation, arranging and filing with the Clerk

of the Supreme Court of this state, by H. C. Cutting, on or before the thirtieth day of September, eighteen hundred and ninety-nine, of a thoroughly compiled and annotated copy of the laws of the State of Nevada, as the same shall exist and be in force on the thirty-first day of March, eighteen hundred and ninety-nine, setting forth and containing all the laws of this state of general and public interest, together with the Constitution of the State of Nevada, and the laws of Congress in regard to naturalization, and the various Acts of Congress relating to the grants of land by the United States to the State of Nevada, with brief annotations or references to all the decisions of the supreme court of this state, construing any and all laws of this state in force on the said thirty-first day of March aforesaid, the said Clerk of the Supreme Court shall at once lay the same before the Justices of the Supreme Court, or a majority thereof, for their examination and approval. The said Justices, or a majority of them, as soon as practicable, shall examine said work and shall approve or disapprove the same, or shall order such changes made therein as they, or a majority of them, may deem advisable. When approved by them or a majority of them, the Justices, shall direct said Clerk to certify their approval of said work, and deliver such certificate to the said H. C. Cutting.

State Printer to Print.

5095. SEC. 3. After making the certificate aforesaid, the Clerk of the Supreme Court, shall deliver said compilation to the Secretary of State, who shall immediately deliver the same to the State Printer, who shall proceed forthwith to print the same.

Proof Sheets to Be Furnished—Accurate Index to Be Made.

5096. SEC. 4. The State Printer shall furnish suitable proof sheets to the said H. C. Cutting, who shall carefully examine and correct the same. He shall also make full and comprehensive table of contents, marginal notes, and headings for each section, together with a full, complete and accurate index to said compilation. Said index shall not be made from the marginal notes and headings alone, but shall be from the subject matter treated of in each section. In all respects it shall be full, comprehensive and complete, and to the approval of the Justices of the Supreme Court, or a majority thereof. When such marginal notes and index are fully completed, the said Justices, or a majority thereof, shall examine and approve or disapprove the same, or shall order such changes made therein as they, or a majority of them, shall deem advisable.

State Officers to Afford Information.

5097. SEC. 7. The Secretary of State and all other state officers shall afford to the said H. C. Cutting all reasonable information, aid, means and facilities for the purpose of enabling him, the said H. C. Cutting, to prosecute and complete the work aforesaid with all reasonable dispatch.

State Printer to Print—Copies to Be Bound.

5098. SEC. 8. Upon receiving said compilation the State Printer shall at once, in as expeditious and economical a manner as practicable, proceed to print, in good style, and to the approval of said Justices of the Supreme Court, or a majority of them, using long primer type and good book paper, fifteen hundred copies of said compilation, and the Secretary of State shall have seven hundred and fifty copies bound, in a good and workmanlike manner in law sheep, in either one or two volumes as the said Justices, or a majority of them, may direct.

Secretary of State to Deliver and Distribute—Price Per Volume.

5099. SEC. 9. The Secretary of State shall deliver one bound copy to each of the persons, libraries, and associations now entitled to receive the laws of the State of Nevada as published biennially, said copies to be delivered subject to the rules and restrictions now governing the distribution of the statutes of this state. He shall deliver ten copies to the State Librarian of the state for the use of the

state, and the remainder of said bound volumes he shall sell as they may be called for at a price not less than six dollars per volume, if bound in one volume, or at a price not less than ten dollars per set, if bound in two volumes, and he shall pay all moneys received from such sales into the state treasury. The remaining unbound sheets shall be bound in lots of not less than one hundred copies, as they may be required.

Secretary of State to Certify.

5100. SEC. 10. Upon the delivery of said compilation ready for printing to the Secretary of State, he shall duly certify the same under the great seal of the State of Nevada, and when printed and distributed, the said compilation, as printed, shall be legal evidence of the law therein contained in all the courts of this state, but shall not preclude reference to or control, in case of any difference, the force or effect of any original Act as passed by the legislature of this state.

Sections omitted make appropriations.

CERTIFICATE OF AUTHENTICATION.

STATE OF NEVADA, }
DEPARTMENT OF STATE. } ss.

I, EUGENE HOWELL, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true and full compilation of the General Laws of the State of Nevada, prepared by H. C. Cutting, under and by authority of an Act of the Legislature of the State of Nevada entitled "An Act to provide for the compiling and publishing of the laws of the State of Nevada," approved February 15, 1899.



IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Great Seal of State, at my office
in Carson City, Nevada, this 28th day of October,
A. D. 1899.

EUGENE HOWELL,
Secretary of State.

APPENDIX.

APPENDIX.

5101. *The Acts cited here are either of special application or of so little interest that it was thought best not to print them in full. References are made to where they and their amendments may be found in the session laws.*

1. AGRICULTURAL SOCIETY, STATE—Incorporation and management of, Stats. 1873, 138. Management and control of, Stats. 1885, 77; Secs. 3 and 4 amended, Stats. 1893, 18.
2. AGRICULTURAL DISTRICTS—Organization and management, Stats. 1885, 79; Secs. 1 and 2 amended, Stats. 1889, 48. County Commissioners may grant aid to, Stats. 1893, 74.
3. ADDITIONAL TERRITORY—Consent given to annexation of, Stats. 1887, 36.
4. COUNTY BOUNDARIES—Counties created and boundaries established, Stats. 1861, 50; Sec. 9 amended, Stats. 1869, 88, and 1871, 57. Authorizing survey, etc., Stats. 1866, 130.
5. COUNTY BUILDINGS—Commissioners authorized to build or purchase, Stats. 1865, 377; amended, Stats. 1871, 132.
6. COURT STENOGRAPHER—Appointment of, for Second Judicial District, Stats. 1899, 103.
7. GAS METERS—Inspection of provided for, Stats. 1877, 202.
8. GLOVE CONTESTS—Licensed, Stats. 1897, 11.
9. LANDS GRANTED BY THE UNITED STATES TO STATE OF NEVADA—Regarding proceeds of sale and preemption rights, U. S. Stats. at Large, vol. 5, 455. Regarding settlers on 16th and 36th sections, U. S. Stats. at Large, vol. 11, 385. For college purposes, U. S. Stats. at Large, vol. 12, 503. To enable people to establish government, etc., U. S. Stats. at Large, vol. 13, 32. Act concerning certain lands granted to State of Nevada, U. S. Stats. at Large, vol. 14, 85. Act to provide for giving effect to various grants, etc., U. S. Stats. at Large, vol. 15, 67. Act to continue in force grant for college purposes, etc., U. S. Stats. at Large, vol. 17, 40. In lieu of 16th and 36th sections, U. S. Stats., 1879-80, 288.
10. LANDS, ACCEPTANCE OF BY STATE OF NEVADA—In relation to, etc., Stats. 1867, 57 (construed with Act of July 4, 1866, 14 U. S. 85-6, sec. 5; also Sec. 3, Art. XI, of State Constitution; Heydenfeldt v. Daney M. Co., 10 Nev. 290). Accepting 2,000,000 acres instead of 16th and 36th sections, Stats. 1879, 106. Acceptance of land for reclamation purposes, Stats. 1895, 111. Disposition of same, Stats. 1897, 64.
11. IMMIGRATION BUREAU, STATE—Providing for, Stats. 1887, 90.
12. OFFICIAL OATH—Prescribed, Stats. 1865, 96.
13. PARIS EXPOSITION—Display of Nevada products, etc., at, Stats. 1899, 62.
14. PRISON—Act concerning, Stats. 1864, 66. Operation of boot and shoe factory in, Stats. 1887, 93.
15. PUBLIC RECORDS—Act relating to, Stats. 1861, 285.
16. RAILROAD—Construction of from Battle Mountain to Austin, Stats. 1875, 54; Secs. 4 and 10 amended, Stats. 1877, 53.
17. STATE DEBT—Payment of, provided for, Stats. 1879, 17.
18. SUTRO TUNNEL—Right of way granted, etc., Stats. 1865, 128.
19. STATE BOUNDARY—Survey and establishment of, Stats. 1865, 133; Secs. 2, 3 and 4 amended, Stats. 1865, 379.
20. STATE LOAN—Acts authorizing, Stats. 1899, 106; 1897, 86; 1895, 79; 1893, 111; 1889, 86; 1887, 109; 1881, 87; earlier Acts not given.
21. SWAMP LANDS—Providing for selection, sale, reclamation, etc., Stats. 1869, 190.
22. TERRITORIAL BONDS—Purchase of, provided for (\$380,000 irredeemable), Stats. 1877, 191; Secs. 2, 3, 4, 5 and 7 amended, Stats. 1879, 15.
23. UNIVERSITY, STATE—Location, etc., Stats. 1873, 166; Secs. 2, 3, 5 and 6 repealed, Stats. 1887, 45. Bonds for improvements at, Stats. 1895, 14; 1897, 32; 1897, 116; 1897, 118.
24. WEATHER SERVICE STATION—Established, Director appointed, etc., Stats. 1887, 70.

5102. *The application of the following Acts depends upon the number of votes cast:*

1. In counties polling 200-250—County Commissioners to fix price of license, Stats. 1899, 59.
2. In counties polling 220-280—Tax authorized to be levied, and apportionment thereof, Stats. 1897, 35; Sec. 2, 3 and 4 amended, Stats. 1899, 39.

3. In counties polling 1600-2000 in 1892—Act relating to highways, Stats. 1893, 122.
4. In counties polling more than 1700 in 1882—Bonds of County Commissioners. Stats. 1883, 109.
5. In counties polling 1700 or more in 1886—Regarding collection of fees, Stats. 1887, 37.
6. In counties polling 2000 or more in 1882—Powers and duties of County Commissioners regarding indigents, Stats. 1883, 107.
7. In counties polling 2000 or more in 1892—Power of County Commissioners to lease county roads. Stats. 1893, 121.
8. In townships polling 1250 or more in 1882—Fees of Justice of the Peace and Constable, Stats. 1883, 54.
9. In townships polling 1600 or more in 1890—Fees of Justice of the Peace and Constable, Stats. 1891, 127.

5103.

CHURCHILL COUNTY.

1. SALARIES—County officers, Stats. 1897, 78.
2. BOUNDARY—Fixed between Nye, Churchill and Esmeralda, Stats. 1875, 102.
3. COUNTY HOSPITAL—Provided for, Stats. 1887, 59.
4. WATER STORAGE—Commissioners may provide for, Stats. 1889, 63.
5. TELEGRAPH LINE—Commissioners may purchase, Stats. 1889, 66.

5104.

DOUGLAS COUNTY.

1. SALARIES—County officers, Stats. 1887, 20; 1891, 77.
2. TAX—For repairs of buildings, authorized, Stats. 1873, 118.
3. BONDS—Commissioners may issue for road purposes, Stats. 1895, 28.

5105.

ELKO COUNTY.

1. SALARIES—County officers, Stats. 1893, 51; Sec. 3 amended, Stats. 1899, 62.
2. COUNTY CREATED—Providing for organization, etc., Stats. 1869, 153; Sec. 6 amended, Stats. 1873, 50.
3. BOUNDARY—Act to establish, Stats. 1871, 92; 1875, 66; 1877, 64.
4. WATER—For Town of Elko, boundaries fixed, etc., Stats. 1873, 134.
5. BONDS—School District No. 1, Stats. 1893, 64. For County High School, Stats. 1895, 59; 1897, 69.
6. ROAD SUPERVISOR—Office provided for, Stats. 1889, 95.

5106.

ESMERALDA COUNTY.

1. SALARIES—County officers' fixed, Stats. 1891, 96; Sec. 2 amended, Stats. 1893, 120; Sec. 3 amended, Stats. 1895, 57.
2. BOUNDARY—Act to define and fix, Stats. 1875, 102. Portion of county annexed to Lyon county, Stats. 1883, 99.
3. BONDS—Providing for issuing for funding indebtedness of county, Stats. 1895, 31. School District No. 13, to issue, Stats. 1889, 56.
4. COUNTY HOSPITAL—Construction and tax provided for, Stats. 1887, 42.

5107.

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1. SALARIES—County officers' fixed, Stats. 1895, 61; 1895, 67; 1897, 47. Justice of the Peace, Eureka Township, Stats. 1893, 19.
2. ASSESSOR—To pay his own Deputy, Stats. 1897, 46.
3. CREATION—Act to provide for, Stats. 1873, 107.
4. BOUNDARY—Act to fix, Stats. 1875, 66; 1881, 104.
5. TAX—For Eureka Road District, Stats. 1891, 16. To pay fire department indebtedness, Stats. 1895, 63.

5108.

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1. SALARIES—County officers' fixed, Stats. 1899, 41.
2. BOUNDARY—Act fixing, Stats. 1873, 189.
3. BONDS—For funding indebtedness, Stats. 1893, 54; Sec. 1 amended, Stats. 1895, 57. School District No. 7 authorized to issue, Stats. 1889, 19. School District No. 3 authorized to issue, Stats. 1895, 24.

5109.

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1. SALARIES—County officers' fixed, Stats. 1895, 68.
2. COUNTY CREATED—Stats. 1892, 53.
3. BOUNDARY—Acts fixing, Stats. 1864, 147; 1866, 183; 1873, 189.
4. BONDS—Issuance of 6 per cent bonds, to redeem railroad bonds, authorized, Stats. 1885, 15. To purchase water works for Austin, Stats. 1893, 67.
5. AUSTIN—To extend time of franchise for supplying water to, Stats. 1893, 37. To prevent herding of sheep within four miles of, Stats. 1897, 22.

5110.

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1. SALARIES—County officers' fixed, Stats. 1887, 63; Sec. 2 amended, Stats. 1891, 19; Secs. 3 and 8 amended, Stats. 1897, 37; Sec. 4 amended, Stats. 1899, 127; Sec. 9 repealed, Stats. 1899, 25.
2. DISTRICT ATTORNEY AND COUNTY SUPERINTENDENT OF SCHOOLS—Act concerning, Stats. 1897, 127.
3. COUNTY CREATED—Stats. 1896, 131; 1897, 129; 1871, 131.
4. BOUNDARY—Act fixing, Stats. 1875, 80.
5. JURY FUND—Special, created, etc., Stats. 1899, 29.
6. INDEBTEDNESS—Provision for payment of certain, Stats. 1897, 47.
7. RAILROAD—Act to encourage construction, Stats. 1899, 128.

5111.

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1. SALARIES—County officers' fixed, Stats. 1891, 52; Secs. 3, 4, 5, and 6 amended, Stats. 1897, 73; Sec. 7 amended, Stats. 1895, 112.
2. BOUNDARY—Acts changing, Stats. 1864, 148; 1883, 99. To definitely fix, Stats. 1899, 41.
3. BONDS—Issuance authorized to pay bonded indebtedness, Stats. 1897, 74. School District No. 9 authorized to issue, Stats. 1897, 93.
4. HOSPITAL—Act to provide for, Stats. 1887, 98.

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1. SALARIES—County officers' fixed, Stats. 1895, 41.
2. COUNTY CREATED—Stats. 1864, 143.
3. BOUNDARY—Acts concerning, Stats. 1866, 183; 1869, 128; 1875, 102.
4. BONDS—New court house bonds to pay for those outstanding, authorized, Stats. 1897, 88.
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4. CARSON—Act to incorporate, Stats. 1875, 87; amended, Stats. 1877, 117; 1879, 67; 1889, 68; 1895, 37.
5. BONDS—Acts to provide for issuance to pay indebtedness, Stats. 1899, 43; 1899, 45. By Carson City for constructing sewerage system, Stats. 1891, 29. For Agricultural Association, Stats. 1891, 55. By School District No. 1, Stats. 1893, 71.
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3. RESERVOIR SITES—County authorized to purchase, Stats. 1899, 81.
4. BONDS—For bridge near Verdi, Stats. 1883, 76. For location of University, Stats. 1885, 74. For construction of sewers, Stats. 1889, 41; 1891, 90. School District No. 10 authorized to issue, Stats. 1895, 47. On property of Wadsworth for fire purposes, Stats. 1899, 56. School District No. 11 authorized to issue, Stats. 1899, 49.

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2. COUNTY CREATED—Stats. 1869, 108.
3. BOUNDARIES—Act to fix, Stats. 1875, 103.
4. INDEBTEDNESS—Payment of certain, provided for, Stats. 1887, 131; amended, Stats. 1889, 14.
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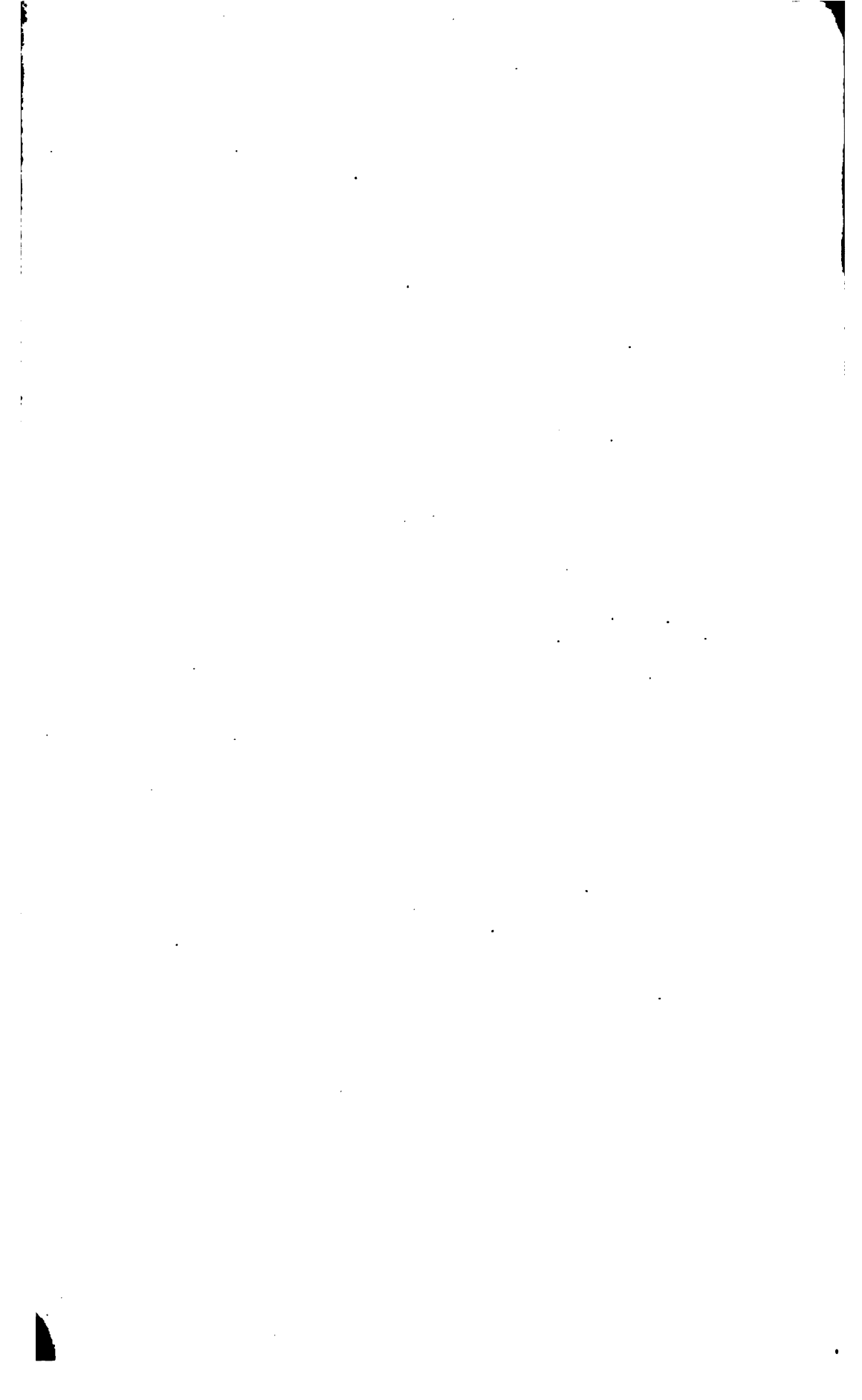
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